Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1975

No. 75-915

VERNON LEE BOUNDS, etc., et al.,
Petitioners

v.

ROBERT (BOBBY) SMITH, et al.,
Respondents

R. L. TURNER, etc.,
Petitioner

v.

DONALD W. MORGAN, et al.,
Respondents

JAMES HOLSHOUSER, etc., et al.,
Petitioners

v.

JOHN HARRINGTON, et al.,
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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IN THE

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VERNON LEE BOUNDS, etc., et al.,
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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The Petitioners respectfully pray that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit entered in this proceeding on September 30, 1975.

OPINION BELOW

The Opinion of the United States Court of Appeals for the Fourth Circuit entered September 30, 1975 is not yet reported and is printed as Appendix A to this Petition. (A pp 14-21).

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTION PRESENTED

WHETHER THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION REQUIRE THE NORTH CAROLINA DEPARTMENT OF CORRECTION TO PROVIDE INMATES WITH LEGAL RESEARCH FACILITIES.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the First and Fourteenth Amendments to the Constitution of the United States.

STATEMENT OF THE CASE

These three consolidated cases arose out of like claims asserted by various inmates of the North Carolina Department of Correction to the effect that, by failing to provide them with adequate legal library facilities, the State of North Carolina was denying to them reasonable access to the courts and equal protection of the laws as guaranteed by the First and Fourteenth Amendments. The United States District Court for the Eastern District of North Carolina, Raleigh Division, granted Plaintiffs' Motion for Summary Judgment and required the State of North Carolina to submit a proposed plan to provide adequate library facilities for the indigent prisoners seeking to file pro se habeas or civil rights actions. The State, obedient to the Order, filed a plan for prison legal research facilities. At this point the inmates objected to the omission from the plan of independent legal counsel for the prisoners as a supplement to the library facilities proposed under the plan. The Court ordered counsel for all parties to submit briefs on the issue of whether an independent attorney's office, supplementary to the library facilities was necessary. After consideration, the Court refused to require the State to establish an independent attorney's office and approved, with modification, the library facility plan submitted by the State obedient to the Order of the Court.

Both the State and the inmates appealed, the State from the Order for Summary Judgment contending that it is without obligation to provide prisoners with legal research facilities or an alternative therefor, and the inmates from the Order approving, with modification, the proposed plan, because they urged such plan was inadequate. The Court of Appeals for the Fourth Circuit, with minor modification, affirmed the action of the District Court in requiring the State to furnish legal research facilities to inmates (A pp 14-21).

REASONS FOR GRANTING THE WRIT

THE NORTH CAROLINA DEPARTMENT OF CORRECTION[1] IS NOT CONSTITUTIONALLY OBLIGATED TO PROVIDE INMATES WITH LEGAL RESEARCH FACILITIES.

1. The Division of Prisons of the North Carolina Department of Correction has custody of approximately 12,500 prisoners. These prisoners are housed in some 77 prison units situated in 67 different counties, stretching from the Currituck Subsidiary in the east to the Haywood Subsidiary in the west, a distance of 475 miles. Fifteen of these units house less than 100 prisoners, 50 from 100 to 200 prisoners, and 10 house over 200 prisoners. The reason for this diffusion of facilities and wide distribution of the prison population is the desire of the State to facilitate work release and other rehabilitative programs and, whenever feasible, to keep the prisoners near their families and within home counties, calculated to aid in their subsequent successful re-entry into society.

The District Court and the Court of Appeals relied upon GILMORE v. LYNCH, 319 F. Supp. 105 (N.D. Cal. 1970), *aff'd sub nom.* YOUNGER v. GILMORE, 404 U. S. 15 (1971). However, this Honorable Court's *per curiam* affirmance of GILMORE v. LYNCH, supra, added little clarity to the law. This Court's citation to another *per curiam*, ALABAMA TEACHERS v. ALABAMA PUBLIC SCHOOLS AND COLLEGE AUTHORITY, 393 U. S. 400 (1969) seems to establish that direct appeal from a three judge district court to this Court is proper when the complaint seeks an injunction against a regulation of state-wide applicability. On the merits, the case of JOHNSON v. AVERY, 393 U. S. 483 (1969), cited in YOUNGER v. GILMORE, supra, established that a state cannot bar mutual legal assistance among inmates unless other reasonably adequate alternative means are made available. However, JOHNSON is based upon a prison regulation prohibiting inmate legal assistance, i.e., that a regulation against "jailhouse lawyer" assistance would not be permitted to stand unless there is an alternative. Therefore, JOHNSON is not applicable because no such prohibition exists in the State of North Carolina. For the same reason, the holding of the Fifth Circuit Court of Appeals in NOVAK v. BETO, 453 F. 2d 661 (5th Cir. 1971) is also inapplicable. In NOVAK the Texas Department of Correction prohibited inmate legal assistance on behalf of other inmates, a situation not found in North Carolina. As a result of this prohibition, the Texas Department of Correction was required to provide legal assistance. It is submitted that the only conclusion which can be drawn from the YOUNGER *per curiam* is purely negative, that a state cannot by regulation restrict the contents of prison law libraries. It is further submitted that nowhere is the rule established requiring prison law libraries, particularly when a state, such as North Carolina, provides meaningful alternatives.

In 1972, in HOOKS v. WAINWRIGHT, 352 F. Supp. 163 (N.D. Fla. 1972), the Court considered the question:

> "Does the state have an affirmative federal constitutional duty to furnish prison inmates with expensive law libraries or to provide inmates with professional or quasi-professional legal assistance?"

Based on the Equal Protection Clause, the Court ruled that the state did have such an obligation and ordered plans presented to implement the ruling.

With deference to the HOOKS v. WAINWRIGHT Court and to the Court of Appeals for the Fourth Circuit, it is respectfully submitted that JOHNSON v. AVERY, supra, has been expanded beyond its intent. JOHNSON had to do with a regulation depriving inmates of the assistance of other inmates in preparing writs. It held that such a regulation, without reasonable alternatives, listing some, deprived prospective petitioners of access to the courts. It did not, and does not now, require establishment of expensive law libraries for prisoners. No doubt, courts receiving inartfully drawn petitions have yearned for the pen to be held by a legal scholar; perhaps that is one of the reasons responsible for the HOOKS decision.

For several reasons it is not sound to postulate that there is a need for establishing law libraries in prisons. This proposition does not realistically appraise their use by numbers, effect or subject; nor are they needed or constitutionally required.

Those of us who work with prisoner petitions know that they are written by only a very small number of inmates for a very small number of the prison population. Therefore, the number of inmates who would benefit, assuming for the moment that there might be some benefit, would be miniscule.

As to the question of benefit, it is submitted that those inmates who write petitions, building kingdoms for themselves within the prison walls, do not contribute wholesomely to the rehabilitative function of the institution. It is such inmates who create strife and detract from the success of rehabilitative programs.

In JOHNSON v. AVERY, supra, at page 488, this Court stated:

> "It is indisputable that prison 'writ writers' like petitioner are sometimes a menace to prison discipline. . . ."

The establishment of prison law libraries will not contribute to rehabilitation and will not inure to the benefit of anyone or the institution. Accepting this premise, the probable result of the establishment of prison law libraries will not result in a benefit to society.

Law is not a science, and highly educated, devoted judges and practicing attorneys sometimes find it difficult to read a statute, a legal treatise or an opinion and determine its precise meaning.

> "Jails and penitentiaries include among their inmates a high percentage of persons who are totally or functionally illiterate, whose educational attainments are slight, and whose intelligence is limited. . . ." JOHNSON v. AVERY, supra, at p. 487.

It is respectfully submitted that the tools of the trade of the legal profession, if furnished to prison inmates would be placed in the hands of individuals ill equipped to use them.

In ROSS v. MOFFITT, 417 U. S. 600 (1974), the question considered by this Court was the constitutional necessity for the appointment of counsel to seek discretionary review. Although set in a different context, the rational of MOFFITT is equally applicable to the question of whether or not a state is required by the Constitution to furnish law libraries to prisoners.

> "Despite the tendency of all rights 'to declare themselves absolute to their logical extreme', there are obviously limits beyond which the equal protection analysis may not be pressed without doing violence to the principles recognized in other decisions of this Court. The Fourteenth Amendment 'does not require absolute equality or precisely equal advantages'."

In MOFFITT, Justice Rehnquist quoted from DOUGLAS v. CALIFORNIA, 372 U. S. 353 (1963):

> ". . . But it is appropriate to observe that the state can, consistently with the Fourteenth Amendment, provide for differences so long as the result does not amount to a denial of due process or an 'invidious discrimination'. Absolute equality is not required; lines can be and are drawn and we often sustain them."

After recounting the necessity for counsel at the trial stage required by the Due Process Clause, Mr. Justice Rehnquist wrote:

> "By contrast, it is ordinarily the defendant, rather than the state who initiates the appellate process, seeking not to fend off the efforts of the state's prosecutor but rather to overturn a finding of guilt made by a judge or jury below. The defendant needs an attorney on appeal not as a shield to protect him against being 'hailed into court' by the state and stripped of his presumption of innocence, but rather as a sword to upset the prior determination of guilt. This difference is significant for while no one would agree that the state may simply dispense with the trial stage of proceedings without a criminal defendant's consent, it is clear that the state need not provide any appeal at all. The fact that an appeal has been provided does not automatically mean that a state then acts unfairly by refusing to provide counsel to indigent defendants at every stage of the way. Unfairness results only if indigents are singled out by the state and denied

> meaningful access to that system because of their poverty. . . ."

And finally, the Court wrote:

> "The fact that a particular service might be of benefit to an indigent defendant does not mean the service is constitutionally required. The duty of the state under our cases is not to duplicate the legal arsenal that may be privately retained by a criminal defendant in a continuing effort to reverse his conviction, but only to assure the indigent defendant an adequate opportunity to present his claims fairly. . . ."

It is respectfully submitted that if a state need not provide an appeal nor provide counsel for discretionary review, if the state is not required to equalize economic conditions and is not mandated to provide elective benefits, it is not required by the Constitution to furnish law libraries for prisoners.

To hold that a state is constitutionally mandated to guarantee access to the courts by furnishing law libraries to prisoners is not consistent with fact. Obviously, expertise is not required. In McCRAY v. BURRELL, 367 F. Supp. 1191, 1193-94 (D. Md. 1973), Chief Judge Northrop wrote:

> "A look at the annual report of the Director of the Administrative Office of the United States Courts for the fiscal year ending June 30, 1972 and the semi-annual report of the Director of the first half of fiscal 1973, lend statistical evidence to our conviction that there is little hope of relief from the swelling ranks of petitioning prisoners. At the appellate level, nearly 31% of the prisoner appeals filed nationwide were filed in the United States Court of Appeals for the Fourth Circuit for fiscal 1972. This percentage rose to 36.1% during the first half of 1973. More importantly, prisoner cases

> accounted for 38% of the cases filed with the Fourth Circuit in 1972, and 45.3% for the first part of 1973."

The North Carolina Department of Correction does not prohibit inmates from preparing writs for others. Therefore, it should not be required to establish law libraries with the collateral hazards of furnishing "adequate" law libraries, with "adequate" access, with "adequate" circulation, and with "adequate" replacement procedures.

Although none of the 77 units comprising the Division of Prisons of the North Carolina Department of Correction has a law library, N.C.G.S. 7A-450,[2] et. seq., *ENTITLEMENT*

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2. § 7A-451. *Scope of entitlement.* — (a) An indigent person is entitled to services of counsel in the following actions and proceedings:
   (1) Any case in which imprisonment or a fine of five hundred dollars ($500.00), or more, is likely to be adjudged;
   (2) A hearing on a petition for a writ of habeas corpus under Chapter 17 of the General Statutes;
   (3) A post-conviction proceeding under Chapter 15 of the General Statutes;
   (4) A hearing for revocation of probation, if confinement is likely to be adjudged as a result of the hearing;
   (5) A hearing in which extradition to another state is sought;
   (6) A proceeding for judicial hospitalization under Chapter 122, Article 7 (Judicial Hospitalization) or Article 11 (Mentally Ill Criminals), of the General Statutes and a proceeding for involuntary commitment to a treatment facility under Article 5A of Chapter 122 of the General Statutes;
   (7) A civil arrest and bail proceeding under Chapter 1, Article 34, of the General Statutes;
   (8) In the case of a juvenile, a hearing as a result of which commitment to an institution or transfer to the superior court for trial on a felony charge is possible;
   (9) A hearing for revocation of parole at which the right of counsel is provided in accordance with the provisions of Chaper 148, Article 4, of the General Statutes;
   (10) A proceeding for sterilization under Chapter 35, Article 7 (Sterilization of Persons Mentally Ill and Mentally Retarded) of the General Statutes; and
   (11) A proceeding for the provision of protective services according to Chapter 108, Article 4, of the General Statutes.

   (b) In each of the actions and proceedings enumerated in subsection (a) of this section, entitlement to the services of counsel begins as soon as feasible after the indigent is taken into custody or service is made upon him of the charge, petition, notice or other initiating process. Entitlement continues through any critical stage of the action or proceeding, including, if applicable:
   (1) An in-custody interrogation;
   (2) A pretrial identification procedure which occurs after formal charges

OF INDIGENT PERSONS GENERALLY, provides a meaningful alternative in the form of court-appointed counsel. In fiscal year 1971-72, the State of North Carolina spent a total of $1,962,719.59 for the appointment of counsel in 11,278 cases. The cost rose in 1972-73 when $2,454,018.00 was appropriated and $2,624,378.41 was actually spent for the appointment of counsel in 16,304 cases, an increase of 44.6%. The 1973 session of the General Assembly of North Carolina appropriated $3,230,000.00 for the 1973-74 fiscal year. For the fiscal year 1974-75, the General Assembly appropriated $3,750,597.00. For the current fiscal year 1975-76, the General Assembly has appropriated $5,596,769.00. In view of the foregoing, the State of North Carolina earnestly contends that this is a meaningful alternative to the establishment of prison law libraries.

In the State of North Carolina there is only one major law library supported with state funds (except for the law libraries maintained in state-supported law schools), i.e., the Library of the Supreme Court of North Carolina. Except for the Supreme Court library and a facility provided for the Judges of the North Carolina Court of Appeals, the State of North Carolina does not provide legal research facilities for the North Carolina judiciary. A Judge of the North Carolina District Court is provided only unbound Advance Sheets of the North Carolina Court of Appeals and the Supreme Court of North Carolina. Judges of the Superior Court are provided both the Advance Sheets and bound volumes of the North Carolina Court of Appeals and the Supreme Court of North Carolina. Through an LEAA grant, Superior Court Judges were on one occasion offered a set of Strong's North Carolina

have been preferred and at which the presence of the indigent is required;

(3) A hearing for the reduction of bail, or to fix bail if bail has been earlier denied;

(4) A preliminary hearing;

(5) Trial and sentencing; and

(6) Review of any judgment or decree pursuant to G.S. 7A-27, G.S. 7A-30(1), G.S. 7A-30(2), and G.S. 15-222.

Index, the North Carolina Statutes, Stansbury on Evidence and the Advance Sheets for the Lawyers' Edition of the United States Supreme Court Reports. Through another LEAA grant, Chief District Court Judges were offered a set of the North Carolina Statutes, a set of Strong's North Carolina Index, and Stansbury on Evidence. Through yet another LEAA grant, this one in the amount of $100,000.00 requiring 25% matching county funds, the 100 counties of this State could establish a minimum law library in a county criminal courtroom. This library would consist of a set of the North Carolina Statutes, a set of Strong's North Carolina Index, Stansbury on Evidence, the Reports of the North Carolina Court of Appeals and the Supreme Court of North Carolina, volumes 200 to date.[3] Seventy counties in the State of North Carolina elected to participate in the program. Of the 70, 64 ordered the North Carolina Reports, 66 the North Carolina Statutes, 69 Strong's North Carolina Index, and 70 Stansbury on Evidence. Merely to provide these items to the counties desiring to participate in the program cost $125,000.

In addition to legal resources provided at the expense of the State of North Carolina pursuant to N.C.G.S. 7A-450, legal assistance is also made available to inmates through the various legal aid societies of the State of North Carolina, the North Carolina Civil Liberties Union, the Prison Research Counsel, Law School Habeas Corpus and Constitutional Law Seminars, various voluntary associations of attorneys and law students, all in addition to counsel appointed by the United States District Courts of the State of North Carolina and the Fourth Circuit Court of Appeals to represent pro se petitioners.

The State of North Carolina has established a complete procedure for collateral review of convictions, N.C.G.S. 15-217, et seq., the *POST CONVICTION HEARING ACT*, which provides for the appointment of counsel, N.C.G.S. 15-219. See, also, N.C.G.S. 7A-451 (a) (3). (See Footnote 2, supra.) The

3. Volume 200 is the Fall of 1930.

appointment of counsel continues through the filing of a Petition for Writ of Certiorari in the North Carolina Court of Appeals to review the judgment of the post conviction court. N.C.G.S. 15-222. See, also, N.C.G.S. 7A-451 (b) (6).

CONCLUSION

The concept of "free access" to the Courts does not justify the establishment of extensive legal research facilities making available to untrained individuals with neither an understanding nor respect for the law, resources not readily available to the greater percentage of attorneys practicing in the State of North Carolina. Furthermore, the State of North Carolina has not yet found itself financially able to provide such extensive legal research facilities to either the Superior or District Court Judges or District Attorneys of this State. And, in the current economy, the cost of installation and maintenance of such facilities, unavailable to the majority of attorneys and members of the judiciary in the State of North Carolina except if they travel to use the libraries of the various Schools of Law or the Library of the Supreme Court of North Carolina, would of necessity result in a diversion of resources so critically needed by the Division of Prisons. "Some states . . . may conceivably find that other claims for public funds within or without the criminal justice system preclude the implementation of such a policy at the present time. . . ." ROSS v. MOFFITT, supra, at 618.

Finally, in light of the Respondents' histories in the Courts, and North Carolina's generous funding of G.S. 7A-450, ENTITLEMENT OF INDIGENT PERSONS GENERALLY, which for the current year is $5,596,769.00, it is appropriate to consider Judge Campbell's admonition that some courts have raced ". . . headlong into the breech in a seemingly frantic effort to prove more royal than the king." CAMPBELL, WILLIAM J., DELAYS IN CRIMINAL CASES, 55 F.R.D. 229, 238 (1972).

For the foregoing reasons, it is respectfully submitted that

this case is of sufficient importance that this Court exercise its jurisdiction and issue a Writ of Certiorari to review the decision of the United States Court of Appeals for the Fourth Circuit. We believe that the question submitted herein is truly substantial and presents to this Court a far reaching issue of the most vital public importance that must be answered.

Respectfully submitted,

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United States Court of Appeals

FOR THE FOURTH CIRCUIT

No. 74-2378

Robert (Bobby) Smith, Ronald D. Carnes, Richard A. Carter, and Bradford Mizell Lilly, on behalf of themselves and all others similarly situated, Appellees,

— versus —

Vernon Lee Bounds, Commissioner, State Department of Correction, and Stanley Blackledge, Warden, Central State Prison, Raleigh, N. C., Appellants.

No. 74-2379

Donald W. Morgan, Franklin D. Strader and John H. Russell, on behalf of themselves and all others similarly situated, Appellants,

— versus —

R. L. Turner, Superintendent of Odom Correctional Institution of the North Carolina Department of Correction, Appellee.

No. 74-2380

John Harrington, Alonzo Watts, Clifton Speight, William Ryder, Ronney McBride, Ray Forbes, Appellants,

— versus —

James Holshouser, Governor State of N. C. V. Lee Bounds, Comm. N. C. Dept. of Corrections, Stanley Blackledge, Warden,

Central Prison, F. R. Moore, Sergeant, Central Prison, Franklin Mahan, Regional Supt., M. S. Lee, Captain Washington County Unit 3560, Creswell, N. C., Appellees.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. John D. Larkins, Jr., District Judge.

Argued: May 8, 1975. Decided: Sept. 30, 1975

Before HAYNSWORTH, Chief Judge; ANDERSON, Senior Circuit Judge,* and RUSSELL, Circuit Judge.

Patrick Antrim [third-year law student] and Howard Manning [court-appointed counsel in Nos. 74-2378 and 74-2379] (Barry Nakell [court-appointed counsel in Nos. 74-2378 and 74-2380] on brief) for Appellees in No. 74-2378 and for Appellants in Nos. 74-2379 and 74-2380; Jacob L. Safron, Assistant Attorney General of North Carolina (Rufus L. Edmisten, Attorney General of North Carolina, on brief for Appellants in No. 74-2378 and for Appellees in Nos. 74-2379 and 74-2380.

RUSSELL, CIRCUIT JUDGE:

The appeal in these three consolidated cases arose out of like claims asserted by various inmates of the North Carolina Correctional System to the effect that, by failing to provide them with adequate legal library facilities, the State was denying to them reasonable access to the Courts and equal pro-

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* Second Circuit, Sitting by Designation.

tection of the laws as guaranteed by the First and Fourteenth Amendments. The District Court granted plaintiffs' motion for summary judgment and required the responsible State officials to submit a proposed plan for implementing the State's obligation to provide adequate library facilities for the use of indigent prisoners seeking to file *pro se* habeas or civil rights actions, or an acceptable alternative therefor. The State, obedient to this order, filed a plan for prison legal research facilities. It would seem that at this point the petitioners, among other things, objected to the omission from the plan of any legal defenders' program by way of a supplement to the library facilities proposed under the plan. The Court accordingly ordered counsel for all parties to submit briefs on the issue of whether an independent attorneys' office, supplementary to the library facilities was necessary to satisfy proper constitutional standards. After consideration of the briefs filed, the Court refused to require the State to establish an independent attorneys' office and approved, with modification, the library facility plan as submitted by the State.

Both the State and the petitioners have appealed, the State from the order for summary judgment because it contends it is without any obligation to provide prisoners with legal research facilities or an alternative therefor, and the plaintiffs from the order approving, with modification, the proposed plan, because they urge such plan is inadequate.

We affirm the action of the District Court in granting summary judgment and, with a minor modification, in approving the plan submitted as satisfying the constitutional obligation of the State to furnish either legal research facilities to the inmates of its correctional system or an acceptable alternative therefor, in accordance with the provisions of the order for summary judgment as granted by the District Court.

The North Carolina Department of Correction has custody of approximately 10,000 prisoners. These prisoners are housed in some 80 prison units situated in 67 different counties,

stretching from one end of the State to the other. The population in these units varies from 1086 in Central prison to as little as 13 in the Warrenton Unit and the units stretch from the Currituck Subsidiary unit in the east, to the Haywood County Subsidiary unit in the west, a distance of 475 miles. Fifteen of the units house less than a hundred prisoners, fifty from 100 to 200 prisoners, and 10 house over 200 prisoners. The reason for this diffusion of facilities and wide distribution of the prison population is the desire to facilitate work release and other rehabilitative programs and, wherever thought feasible, to keep the prisoners near their families and within home counties, calculated to aid in their subsequent successful re-entry into society. The only unit having a writ room and the semblance of a legal library is the Central Prison in Raleigh. Under the plan approved by the District Court, there would be "approximately seven core libraries located in units throughout the state. Each of these units * * * [would] service a number of designated institutions. In selecting which units * * * [would] be the site of libraries, the Department of Correction * * * [would] consider from which units the most petitions are most likely to originate, and further it * * * [would] consider geographic access." The site selections, however, were subject to the approval of the Court. The plan, also, had various provisions whereby the facilities would be made available to the prisoners.[1] The plan, also, contemplated

1. The plan further provided:
"In each unit forms will be provided for the inmates to request permission to use the library. When an inmate makes a request to use the library, the request will be forwarded to the library in the immediate area. A date will be set for that inmate to use the library. The inmate will indicate approximately how much time will be required to research his particular problem. In most cases a full day's use of the library will be allotted. Therefore, the inmate will be taken, if necessary, to that unit on the night before, housed there overnight, permitted to use the library all day, and then be taken to his home unit on the following day. It is also possible that the inmate can be taken to the institution housing the library on the morning of the day he proposes to use it and then return to his home unit on the evening. This is a logistical problem that will have to be worked out when the libraries are in actual operation. In any event, housing will be made available for inmates desiring to use the library in those cases in which an overnight stay is required.

(Continued on next page.)

a library consisting of certain specified legal reports, statutes or treatises.[2]

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1 (Continued)

"The library will consist of the books in the list appended hereto. In the case of prisoners on indefinite non-punitive segregation in Central Prison and for Correctional Center for Women, we recommend establishing smaller core libraries containing basically N. C. General Statutes and treatises. Women inmates and those on INS may request volumes from the library which will probably be located in Central Prison. An area will be set aside at Women's Prison and in the INS cell block area for working with research material.

"The library will be housed in a room large enough to contain adequately all volumes on hand plus those that will be added by normal expansion. It will be well lighted and suitable for research purposes. Writing material, pen and paper will be provided. It is anticipated that each library will make use of one or two inmates as typists to prepare court petitions and who shall also supervise the day to day use of the library. In order to preserve materials in the library, inmates will be searched upon entering and upon leaving the library. Those inmates who work in the libraries will be assigned library duties on a permanent basis. They will be trained to the best extent possible in researching legal questions and assisting inmates in their research. They will also be permitted to help illiterate and semi-illiterate inmates. It will be recommended to the Corrections Commission that it be specifically made a violation of Department regulations for an inmate to hold himself out as a lawyer, or to accept fees or any payment of any sort for assisting other inmates in their research.

"Such restrictions as are placed on the inmates shall be in accordance with the limitations set forth in Johnson vs. Avery. The library will be subject to the overall supervision of Department personnel. A prison librarian will be in charge of dispersing legal materials to the various libraries.

"Inmates who are under a deadline, e.g. those filing appeals, shall be granted priority over other inmates in the use of the library and the Department will see that those inmates are given access to library within the required time as long as the Department is notified in adequate time to allow the inmate to use the library. For other inmates there may be a waiting period of up to three or four weeks.

"Inmate will have access to a Xerox machine for copying opinions, statutes, etc. This will be on a cost basis to those inmates who are able to pay. Those who are not will be permitted to use the library free. In the regard to the posting of inmate petitions to the courts, postage will be paid by the inmates themselves if they are able to do so; if not, by the Department of Correction. In addition to the legal form books which are recommended, the sample forms will be made available in the libraries plus those forms authorized for use in the appropriate Federal Judicial Districts.

"It is anticipated that approximately ten inmates shall be able to use a library on any given day. Furthermore, inmates simply desiring forms on which to petition the courts may write to the library nearest them and request the forms to be sent. As departmental personnel and inmate assistants gain expertise in this area, it is anticipated that increasingly better legal services will be available to the inmate. By this proposed plan, with optimum use of the library some 350 inmates each week could be making use of research materials in the libraries. In addition to this figure, many inmates will be assisted by having access to forms when they do not actually need the research facilities."

The argument of the State that it was not obligated to submit such a plan and that the grant of summary judgment to require such submission is without merit. Barring the development of an acceptable alternative, the State was bound to make available on some reasonable basis to the inmates of its penal institutions adequate legal research facilities. The District Court extended to the State an opportunity to present an acceptable alternative. The State did not offer such alternative. Under those circumstances, its duty was plain: The State was obligated to provide the inmates with adequate legal research facilities. Its admitted failure to do so warranted the grant by the District Court of summary judgment.

Petitioners, on the other hand, argue that the plan, as approved, as satisfying the requirements of the order for sum-

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2. LIBRARY MATERIALS

"*North Carolina General Statutes*
North Carolina Reports (1960-)
N. C. Court of Appeals Reports
Strongs N. C. Index
North Carolina Rules of Court (West)
U. S. Code Annotated (West)
Title 18
Title 28 § 2241-2254
Title 28 — Rules of Appellate Procedure
Title 28 — Rules of Civil Procedure
Title 42 — §§ 1891-2010
Supreme Court Reporter (West) (1960-)
Federal Reporter 2d (West) (1960-)
Federal Supplement (West) (1960-)
Black's *Law Dictionary* (West)
Sokol *Federal Habeas Corpus* (Michie)
Lafave and Scott *Criminal Law Hornbook* (West) (2 copies)
Cohen *Legal Research*
Criminal Law Reporter (Bureau of National Affairs)
Palmer *Constitutional Rights of Prisoners* (Criminal Justice Text Series)

Core

North Carolina General Statute
Black's *Law Dictionary* (West)
Sokol *Federal Habeas Corpus* (Michie)
Lafave and Scott *Criminal Law Hornbook* (West) (2 copies)
Cohen *Legal Research*
Criminal Law Reporter (Bureau of National Affairs)
Palmer *Constitutional Rights of Prisoners* (Criminal Justice Text Series)

MODIFICATIONS BY COURT

1. that two copies of Title 28 U.S.C.A. § 2254 and Title 42 U.S.C.A. §§ 1891-199[illegible] be required for each core library;
2. that no reporter advance sheets or volumes be discarded, in effect giving each library two volumes of each current reporter, * * *.

mary judgment, is deficient in that it fails to include provision for an independent attorneys' office to supplement the library facilities made available to the inmates and that the library facilities themselves are not extensive enough. The District Court, while finding that the addition of an independent attorneys' office would be helpful, held that the State was not obligated to provide such additional assistance. In cases which have arisen since the pioneer authority, *Gilmore v. Lynch* (N.D. Cal. 1970) 319 F. Supp. 105, *aff. sub nom. Younger v. Gilmore* (1971) 404 U. S. 15, it has been generally assumed that adequate legal research facilities and an acceptable legal assistance program are to be thought of as alternatives and not as supplements to each other in the discharge of the State's obligation in this area. *See Kirby v. Ciccone* (8th Cir. 1974) 491 F. 2d 1310, 1312; *Noorlander v. Ciccone* (8th Cir. 1973) 489 F. 2d 642, 650-1; *Johnson v. Anderson* (D. Del. 1974) 370 F. Supp. 1373, 1385; *cf. Ross v. Moffitt* (1974) 417 U. S. 600, 616-18. We agree and are of opinion that the District Court correctly ruled that the State is under no constitutional duty to offer the inmates of its penal institutions both adequate legal research facilities and an independent attorneys' office, however helpful the dual service might be.[3]

In view of the great variety in prisoner population in the many diffuse and widely distributed prison installations in the North Carolina prison system, we, also, find that the provisions for the use of the facilities and the adequacy of the facilities themselves, meet constitutional standards save in one particular. The instance in which we are of the opinion the plan is deficient is the differentiation made in the rights of male and women prisoners. Women prisoners are afforded under the plan less accessibility to legal research facilities than male prisoners. The plan states no substantial reason for this

3. Of course, the State would have the right, should it later determine that independent legal counsel for prisoners would be preferable to providing them adequate legal research facilities, to apply to the District Court for permission to adopt a legal counseling service in lieu of the library facilities, as now provided under the order of the District Court.

discrimination nor is one apparent in the record. *See Reed v. Reed* (1971) 404 U. S. 71, 76; *Eslinger v. Thomas* (4th Cir. 1973) 476 F. 2d 225, 230-1. Without such a showing, the discrimination against female prisoners is invalid. The plan must be modified by removal of this discrimination.

As modified, the decree of the District Court herein is affirmed.

Supreme Court, U. S.
FILED
JUN 28 1976
MICHAEL RODAK, JR., CLERK

APPENDIX

Supreme Court of the United States

October Term, 1975

No. 75-915

VERNON LEE BOUNDS, etc., et al.,
Petitioners

v.

ROBERT (BOBBY) SMITH, et al.,
Respondents

R. L. TURNER, etc.,
Petitioner

v.

DONALD W. MORGAN, et al.,
Respondents

JAMES HOLSHOUSER, etc., et al.,
Petitioners

v.

JOHN HARRINGTON, et al.,
Respondents

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI
FILED DECEMBER 29, 1975
CERTIORARI GRANTED APRIL 5, 1976

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Supreme Court of the United States

October Term, 1975

No. 75-915

VERNON LEE BOUNDS, etc., et al.,
Petitioners

v.

ROBERT (BOBBY) SMITH, et al.,
Respondents

R. L. TURNER, etc.,
Petitioner

v.

DONALD W. MORGAN, et al.,
Respondents

JAMES HOLSHOUSER, etc., et al.,
Petitioners

v.

JOHN HARRINGTON, et al.,
Respondents

RELEVANT DOCKET ENTRIES

BOUNDS v. SMITH

May 25, 1972. Plaintiffs, state court prisoners housed at North Carolina Central Prison, Raleigh, North Carolina, filed a pro se complaint pursuant to 42 U.S.C. § 1983 claiming that their constitutional rights had been violated because the Defendants denied "to them and all others similarly situated a law library where they would be able to look for mandatory, judicial, persuasive and secondary authorities . . ."

June 16, 1972. Defendants filed Motion to Dismiss

August 11, 1972. Memorandum Opinion and Order filed granting Defendants' Motion to Dismiss as to allegations 3, 4, 5 and 6. Defendants' Motion to Dismiss allegations 1 and 2 was denied and the Defendants ordered to fully respond to allegations 1 and 2. (Supp. A. p. 1)

September 18, 1972. Answer filed by Defendants

November 30, 1972. Order filed appointing Howard E. Manning, Esq., to represent Plaintiffs.

July 24, 1973. Plaintiffs filed Motion for Summary Judgment.

August 16, 1973. Memorandum Opinion and Order filed granting Summary Judgment and ordering the North Carolina Department of Correction to file comprehensive proposals for providing the Plaintiffs with law libraries or reasonable alternatives to them. (Supp A. p. 9)

November 8, 1973. Order entered enlarging time to file comprehensive proposals.

December 24, 1973. Defendants filed proposed plans for inmate law libraries.

April 20, 1974. Plaintiffs filed objections to Defendants' proposed plan.

May 30, 1974. Memorandum Opinion and Order filed approving the prison library plan as modified and ordering counsel for all parties to submit briefs on the issue of the establishment of an independent attorney's office in the Department of Correction. (Supp. A. p. 14)

October 11, 1974. Consolidated Memorandum Opinion and Order filed consolidating SMITH v. BOUNDS with MORGAN v. TURNER, No. 4277—Raleigh (E.D. N.C.) and HARRINGTON v. HOLSHOUSER, No. 790-RE Washington (E.D. N.C.) and ordering that the issue of an independent attorney's office be resolved in favor of the defendants. (Supp. A. p. 21)

October 11, 1974. Defendants' proposed law library, with modifications, is adopted by the Court. (Supp. A. p. 22)

November 6, 1974. Defendants file Notice of Appeal to the Fourth Circuit Court of Appeals.

MORGAN v. TURNER

April 5, 1973. Plaintiffs, state court prisoners housed at the Odom Correctional Institution of the North Carolina Department of Correction, filed a pro se complaint pursuant to the provisions of 42 U.S.C. § 1983 presenting various contentions, among which was the contention that the Defendant was "depriving them of the First and Fifth Amendment rights of freedom of access to the Courts by refusing and failing to provide indigent plaintiffs and the class they represent with any law library."

May 22, 1973. Order filed appointing Howard E. Manning, Esq., to represent the Plaintiffs.

June 6, 1973. Defendant filed Motions to Dismiss and for Summary Judgment.

July 24, 1973. Plaintiffs filed Motion for Summary Judgment.

August 16, 1973. Memorandum Opinion and Order filed granting the Plaintiffs' Motion for Summary Judgment "permanently enjoining the Defendant from denying Plaintiffs a law library." (Supp. A. p. 29)

May 30, 1974. Memorandum Opinion and Order consolidating this case with SMITH v. BOUNDS, No. 3052, and ordering the State to implement a prison law library and further ordering counsel to submit briefs on the issue of the establishment of an independent attorney's office in the Department of Correction. (Supp. A. p. 14)

HARRINGTON v. HOLSHOUSER

February 23, 1973. Plaintiffs, state court prisoners housed at the Washington County Subsidiary of the North Carolina

Department of Correction, filed a paperwriting pursuant to 42 U.S.C. § 1983 in which they parenthetically stated "that no writ room facilities are provided at Creswell Prison Unit nor paper, carbon paper, law books, photocopier, typewriter, or facilities such as table and environment conductive to pursuit of such an interest".

March 20, 1973. Defendants filed Motions to Dismiss and for Summary Judgment.

May 25, 1973. Memorandum Opinion and Order filed allowing the Defendants' Motion for Summary Judgment and dismissing the Plaintiffs' Complaint. (Supp. A. p. 31)

June 29, 1973. Notice of Appeal filed. District Court enters Certificate that appeal not taken in good faith.

March 20, 1974. Certificate of Probable Cause issued by the Fourth Circuit Court of Appeals and Professor Barry Nakell of the University of North Carolina School of Law, Chapel Hill, North Carolina, is assigned as counsel to represent the Appellants.

September 5, 1974. Oral argument heard in the United States Court of Appeals.

September 23, 1974. Opinion of the United States Court of Appeals for the Fourth Circuit filed in HARRINGTON v. HOLSHOUSER, No. 74-1320, 506 F. 2d 1397 (4th Cir. 1974) [Table] and remanded to the District Court with the suggestion that it be consolidated with SMITH v. BOUNDS, supra.

October 11, 1974. Order entered that HARRINGTON v. HOLSHOUSER be consolidated with SMITH v. BOUNDS, supra, and MORGAN v. TURNER, supra.

CONSOLIDATED PROCEEDINGS

October 11, 1974. Memorandum Opinion and Order filed in the consolidated cases finding no constitutional right to

the establishment of an independent attorney's office in addition to a law library program. (Supp. A. p. 21)

October 11, 1974. Order filed approving, with modification, the Department of Correction's proposed prison library plan. (Supp. A. p. 26)

November 6, 1974. Defendants filed Notice of Appeal

May 8, 1975. Oral arguments heard in the United States Court of Appeals for the Fourth Circuit.

September 30, 1975. Opinion of the United States Court of Appeals for the Fourth Circuit filed in the consolidated cases of SMITH v. BOUNDS, MORGAN v. TURNER and HARRINGTON v. HOLSHOUSER.

December 29, 1975. Petition for Writ of Certiorari filed in the Supreme Court of the United States in the consolidated cases of BOUNDS v. SMITH, TURNER v. MORGAN, and HOLSHOUSER v. HARRINGTON, No. 75-915, October Term, 1975.

April 5, 1975. Petition for Writ of Certiorari granted.

EXCERPTS FROM COMPLAINT FILED MAY 25, 1972

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA RALEIGH DIVISION

Civil Action No. _____

Robert (Bobby) Smith,	)	
Ronald D. Carnes,	)	
Richard A. Carter, and	)	Civil Rights
Bradford Mizell Lilley,	)	Complaint
Plaintiffs,	)	and
on behalf of themselves	)	Application For A
and all others similarly	)	Preliminary Injunction
situated	)	Cum Causa
—vs—	)	
Vernon Lee Bounds, Commissioner,	)	
State Department of Correction	)	
and Stanley Blackledge, Warden	)	
Central State Prison, Raleigh,		
North Carolina,	)	
Defendants	)	

Now Comes the plaintiffs Robert (Bobby) Smith, Ronald D. Carnes, Richard A. Carter, and Bradford Mizell Lilley, and would respectfully show unto the Court:

1

That they are political prisoners confined and held captive at Central Prison, 835 West Morgan Street, Raleigh, North Carolina, in the Custody of the bourgeois reactionary Warden Stanley Blackledge who is active under the direction of Vernon Lee Bounds, as commissioner of the so-called North Carolina Department of Correction.

2

That they submit this bonafide Complaint and Application

to the Court as a class action under Rule 23 of the F.R.C.P. and pursuant to the provisions of Title 42 U.S.C. 1983 and Title 28 U.S.C. 1343 (3) — (4), to enjoin the above-named defendants and their authorized agents from conducting the internal affairs of Central Prison in such a way as to deny to them and all others similarly situated human and constitutional rights guaranteed to them by the First, Eighth, and Fourteenth Amendments to the United States Constitution, Article 1, Sections 12, 19, and 27 of the North Carolina Constitution; and Articles 5, 6, 7 and 8 of the Universal Declaration of Human Rights, as hereinafter set out.

3

Plaintiffs allege that because of the defendants rules, regulations and policies, they are denied their First Amendment Right to effective and unlimited access to the Courts to redress for grievances; that the defendants maliciously deprive them of the right to prepare and serve petitions in the Courts that are orthodox in form and contain meritorious contentions by way of denying to them and all others similarly situated a law library, where they would be able to look for mandatory, judicial, persuasive and secondary authorities and find the correct word, statute and case approach through research.

4

Plaintiffs allege that they are unable to purchase all of the law books and materials that are needed because of their indigency and the defendants are denying them and others similarly situated a law library or any other means whereby they would be able to do the necessary research on their cases and effectively attack their convictions and sentences, despite the fact that the United States Supreme Court has recently upheld an order of a three-judge California District Court requiring the state to provide adequate law libraries for prison inmates. SEE: *Gilmore -vs- Lynch*, juris postponed, 401 U.S. 906 (1971) reviewing 319 F. Supp. 105 (D. Cal 1970)

5

Secondly, plaintiffs allege that the defendants are denying to them, the right to assist illiterate inmates in the preparation of their petitions to attack their convictions and sentences, and the preparation of Complaints against prison authorities for inflicting cruel and unusual punishments upon them; that defendants do not officially provide adequate legal assistance for prisoners confined at Central Prison and other maximum security units in the State of North Carolina: See: *Johnson-v-Avery* 393 U.S. 483 (1969), wherein the United States Supreme Court held: that unless prison officials provide reasonable legal assistance to inmates they may not validly enforce a regulation barring inmates from helping each other with legal work. The decision followed lower court holdings striking down similar regulations in Florida and at the federal prison in Atlanta, Georgia. See: *Coonts -v- Wainwright*, 282 F. Supp. 893 (M.D. Fla. 1968) aff'd 409 F. 2d 1337 (5th Cir. 1969); *White -v-Blackwell*, 277 F. Supp. 211 (N.D. Ga. 1967). The Supreme Court in 393 U.S. at 486 explicitly rejected the argument that inmate legal assistance must be banned because "jailhouse lawyers" would interfere with prison discipline.

****

(MOTION TO DISMISS)
(Filed June 16, 1972)

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF NORTH CAROLINA

RALEIGH DIVISION

ROBERT (BOBBY) SMITH, RONALD D. CARNES, RICHARD A. [illegible]ARTER and BRADFORD MIZELL LILLEY, Plaintiffs On behalf of themselves and all others similarly situated	)	
v.	)	CIVIL NO. 3052
VERNON LEE BOUNDS, Commissioner, STATE DEPARTMENT OF CORRECTION, and STANLEY BLACKLEDGE, WARDEN, CENTRAL STATE PRISON, RALEIGH, NORTH CAROLINA, Defendants	)	MOTION TO DISMISS

TO: HONORABLE JOHN D. LARKINS, JR., JUDGE, UNITED STATES DISTRICT COURT, PRESIDING OVER THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NORTH CAROLINA — RALEIGH DIVISION:

NOW COME the Defendants, V. Lee Bounds, Commissioner of the North Carolina Department of Correction, and Dr. Stanley Blackledge, Warden of North Carolina Central Prison, who move to dismiss the paperwriting filed herein and as reasons therefore respectfully represent unto Your Honor:

1. That, this Honorable Court lacks jurisdiction of the subject matter of the paperwriting.

2. That, this Honorable Court lacks jurisdiction over the persons of the Defendants.

3. That, the contentions set forth in the paperwriting are conclusory in nature and fail to adequately allege facts in support thereof.

4. That, the contentions set forth in the paperwriting fail to state a claim upon which the relief sought can be granted.

5. That, the contentions set forth in the paperwriting are repetitious.

6. That, the contentions set forth in the paperwriting are frivolous.

Respectfully submitted,
ROBERT MORGAN
Attorney General
Jacob L. Safron
Assistant Attorney General

I HEREBY CERTIFY that on this 15th day of June, 1972, a copy of the foregoing Motion to Dismiss and Defendants' Memorandum in Support of Motion to Dismiss were mailed, postage prepaid, to Robert (Bobby) Smith, Ronald D. Carnes, Richard A. Carter and Bradford Mizell Lilley, Plaintiffs Pro Se, 835 West Morgan Street, Raleigh, North Carolina — 27603.

Jacob L. Safron
Assistant Attorney General

* * * * *

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

No. 3052 Civil

Robert (Bobby) Smith, Ronald D. Carnes, Richard A. Carter and Bradford Mizell Lilley, Plaintiffs	)	
v.	)	
Vernon Lee Bounds, Commissioner State Department of Correction and Stanley Blackledge, Warden, Central Prison, Raleigh, North Carolina Defendants	)	AFFIDAVIT

V. L. Bounds, being duly sworn, says:

That he is the Commissioner of Correction, North Carolina State Department of Correction. That as such he administers the affairs of the State Department of Correction in accordance with law and general policies, rules and regulations duly adopted by the Commission of Correction. That this authority and these responsibilities includes but is not limited to, among other things: "The control and custody of all prisoners serving sentence in the State Prison System, and such prisoners are subject to all the rules and regulations legally adopted for the government thereof."

That at the present time there are eighty (80) prison institutions and subsidiaries located in sixty-seven different counties. That the average population is about 10,000 inmates.

This 31 day of May, 1972.

V. L. Bounds
Affiant

Sworn to and subscribed before me
this 31 day of May, 1972.
Signature Illegible

Notary Public

My commission expires:
September 21, 1974

* * * * *

LAW REFERENCE MATERIALS AVAILABLE IN WRIT ROOM

1. **UNITED STATES SUPREME COURT REPORTS (LAWYERS' EDITION) From 1966 to 1971**
2. **UNITED STATES SUPREME COURT ADVANCE SHEETS (single cases) From 1966 to 1971**
3. **NORTH CAROLINA GENERAL STATUTES (Annotated):**
   - **A. Volume 1-A**
   - **B. Volume 1-B**
   - **C. Volume 1-C**
   - **D. Volume 1-D**
   - **E. Volume 2-A**
   - **F. Volume 4-A**
4. **ADVANCE LEGISLATIVE SERVICE TO GENERAL STATUTES:**
   Volume 1 through 15
5. **LAW TEXTBOOKS:**
   - **A. CASES & MATERIALS ON CRIMINAL LAW AND PROCEDURES (Remington)**
   - **B. MODERN CRIMINAL PROCEDURE (Hall & Kamisar, 2nd Ed.)**
   - **C. THE ADMINISTRATION OF CRIMINAL JUSTICE (cases and materials) (2nd ed., Sullivan, Hardin, Houston, Lacy, Murray & Pugh)**
   - **D. McCORMICK'S CASES ON EVIDENCE (3rd Ed.)**
   - **E. CRIMINAL LAW AND ITS PROCESSES (Paulsen & Kadish)**

* * * * *

ANSWER FILED
September 18, 1972

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF NORTH CAROLINA

RALEIGH DIVISION

ROBERT (BOBBY) SMITH, RONALD D. CARNES, RICHARD A. CARTER, and BRADFORD MIZELL LILLY, on behalf of themselves and all others similarly situated, Plaintiffs	)	
v.	)	CIVIL NO. 3052
VERNON LEE BOUNDS, Commissioner, State Department of Corrections, and STANLEY BLACKLEDGE, Warden, Central State Prison, Raleigh, North Carolina, Defendants	)	

ANSWER

Answering Plaintiffs' Complaint, Defendants allege as follows:

FIRST DEFENSE

That the Plaintiffs, and all other inmates committed by the courts of the State of North Carolina to the custody of the North Carolina Department of Correction and confined in 80 correctional units located across the State of North Carolina, have free and unrestricted access to the courts of the State of North Carolina and the United States of America.

SECOND DEFENSE

That the State of North Carolina provides a meaningful alternative to the establishment of law libraries in the 80 correctional units which presently constitute the North Carolina

Department of Correction by the budgeting, for the fiscal year beginning July 1, 1972, of the sum of $2,066,622 for the appointment of counsel for indigent defendants. That during fiscal year 1971 counsel for indigent defendants, as provided pursuant to N.C.G.S. 7A-450, et seq., and N.C.G.S. 7A-465, et seq., were appointed in 11,278 instances at a cost to the State of North Carolina of $1,962,719.59.

THIRD DEFENSE

That in addition to the legal resources provided at the expense of the State of North Carolina pursuant to N.C.G.S. 7A-450, et seq., and N.C.G.S. 7A-465, et seq., for both direct review and collateral attack, legal assistance is made available to the Plaintiffs, and others similarly situated, through the various legal aid societies of the State of North Carolina, the North Carolina Civil Liberties Union, the Prison Research Council, Law School Habeas Corpus Seminars, various voluntary associations of attorneys and law students, all in addition to counsel appointed by this and other federal courts to represent pro se petitioners.

FOURTH DEFENSE

That as mandated by the Supreme Court of the United States in ARGERSINGER v. HAMLIN, ___ U.S. ___, 92 S. Ct. 2006, 32 L. Ed. 2d 530 (1972), absent a knowing and intelligent waiver, no defendant may be imprisoned unless he was represented by counsel at his trial. The State of North Carolina has implemented the requirements of ARGERSINGER by an emergency allocation to the Administrative Office of the Courts in the sum of $311,676, as of September 1, 1972, for the remaining 10 months of the current fiscal year, for the payment of counsel appointed to represent indigent defendants charged with petty misdemeanors not previously included within the provisions of N.C.G.S. 7A-451 (a) (1).

FIFTH DEFENSE

That the State of North Carolina provides a meaningful

alternative to the establishment of law libraries in the 80 correctional units housing inmates committed to the custody of the North Carolina Department of Correction in that the committed inmates have all the legal assistance to which they are entitled through their appointed attorney's access to a law library. Pursuant to N.C.G.S. 7A-450, et seq., entitlement of indigent persons generally, and N.C.G.S. 7A-465, et seq., the public defender, the State of North Carolina provides licensed attorneys to indigent defendants at the expense of the State of North Carolina in the following actions and proceedings:

"(1) Any felony case, and any misdemeanor case for which the authorized punishment exceeds six months imprisonment or a five hundred dollars ($500.00) fine;

(2) A hearing on a petition for a writ of habeas corpus under chapter 17 of the General Statutes;

(3) A post-conviction proceeding under chapter 15 of the General Statutes;

(4) A hearing for revocation of probation, if counsel was provided at trial or if confinement of more than six months is possible as a result of the hearing;

(5) A hearing in which extradition to another state is sought;

(6) A proceeding for judicial hospitalization under chapter 122, article 11 (Mentally Ill Criminals), of the General Statutes;

(7) A civil arrest and bail proceeding under chapter 1, article 34, of the General Statutes; and

(8) In the case of a juvenile, a hearing as a result of which commitment to an institution or transfer to the superior court for trial on a felony charge is possible."

In each of the actions enumerated above, entitlement to

counsel continues through direct review of any judgment or decree, including review by the United States Supreme Court of final judgments or decrees rendered by the highest court of North Carolina in which decision may be had. N.C.G.S. 7A-451 (b) (6).

SIXTH DEFENSE

That the State of North Carolina has established a complete procedure for collateral review of convictions, N.C.G.S. 15-217, et seq., the Post Conviction Hearing Act, which provides for the appointment of counsel, N.C.G.S. 15-219. See, also, N.C. G.S. 7A-451 (a) (3). The appointment of counsel continues through the filing of a petition for writ of certiorari in the North Carolina Court of Appeals to review the judgment of the post conviction court, N.C.G.S. 15-222. See, also, 7A-451 (b) (6).

SEVENTH DEFENSE

That the concept of "free access" to the courts does not justify the establishment of extensive legal research facilities, making available to untrained individuals who have neither an understanding of the law or a respect for the integrity of the material, resources not readily available to the greater percentage of practicing attorneys in the State of North Carolina.

EIGHTH DEFENSE

That the State of North Carolina does not provide legal research facilities of the type sought by the Plaintiffs to the judiciary of the State of North Carolina, except for the library of the Supreme Court of North Carolina and the subsidiary library of the appellate division. The only other law libraries existing at the expense of the State of North Carolina are those in the State supported schools of law, i.e., the School of Law, University of North Carolina, Chapel Hill, North Carolina, and the School of Law, North Carolina Central University, Durham, North Carolina.

NINTH DEFENSE

That the library of the Supreme Court of North Carolina, and the libraries of the various schools of law, make available, at a nominal charge, to anyone requesting the material, copies of specific court decisions.

TENTH DEFENSE

That the North Carolina Department of Correction is a unique, multiple, community based correctional system, presently consisting of 80 units, of which only 5 or 6 may be characterized as other than a small unit, the remaining 75 or so units being small units which permit the inmates to be housed close to their home communities in programs designed for successful re-entry into society. Unlike the situation existing in states possessing prison systems consisting of only several huge units, the North Carolina Department of Correction cannot, because of its community based small unit approach to rehabilitation, secure the resources necessarily required to equally provide all inmates, wherever they may be housed in the State of North Carolina, with the extensive law library sought by a handful of litigious inmates presently confined at Central Prison, Raleigh, North Carolina. The cost of installation and maintenance of such facilities, unavailable to most licensed attorneys in the State of North Carolina except if they travel to use the libraries of the various schools of law or the library of the Supreme Court of North Carolina, would of necessity result in a restructuring of the community based correctional system of which the State of North Carolina is now so deservedly proud.

ELEVENTH DEFENSE

Except to admit that the Plaintiffs are inmates committed to the custody of the North Carolina Department of Correction by the courts of the State of North Carolina and housed at Central Prison, Raleigh, North Carolina; that the Defendant, Vernon Lee Bounds, is the Commissioner of the North Carolina Department of Correction; that the Defendant, Stanley Blackledge, is the Warden of North Carolina Central Prison, Raleigh, North Carolina, one of 80 units of the North Carolina Department of Correction; that each of the Plaintiffs have been represented by court-appointed counsel, paid by the State of North Carolina, at their trials and upon their appeals; that the Plaintiffs, together with a small band of other inmates constitute a clique of "writ writers" and "jail house lawyers", that the Plaintiffs, and a small clique of other inmates housed at Central Prison, have flooded the courts with baseless paperwritings; and that the Plaintifts have no qualms about attempting to utilize the processes of the courts by the repeated filing of baseless paperwritings, all the rest and remaining allegations of the Plaintiffs' Complaint are denied.

This 14th day of September, 1972.

ROBERT MORGAN
ATTORNEY GENERAL

Jacob L. Safron
Assistant Attorney General

ATTORNEYS FOR DEFENDANTS,
COMMISSIONER VERNON LEE BOUNDS, and
WARDEN, DR. STANLEY BLACKLEDGE.

Post Office Box 629
Raleigh, North Carolina 27602

I HEREBY CERTIFY that on this 14th day of September, 1972, a copy of the foregoing Answer was mailed, postage prepaid, to Robert (Bobby) Smith, Ronald D. Carnes, Richard A. Carter and Bradford Mizell Lilly, Plaintiffs Pro Se, 835 West Morgan Street, Raleigh, North Carolina — 27603.

Jacob L. Safron
Assistant Attorney General

* * * * *

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT FILED JULY 24, 1973

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

ROBERT (BOBBY) SMITH, RONALD D. CARNES, RICHARD A. CARTER and BRADFORD MIZELL LILLY, Plaintiffs.

On behalf of themselves and all others similary situated Civil Action No. 3052

VS MOTION FOR SUMMARY JUDGMENT

VERNON LEE BOUNDS, Commissioner, STATE DEPARTMENT OF CORRECTION, and STANLEY BLACKLEDGE, Warden, CENTRAL STATE PRISON, RALEIGH, NORTH CAROLINA, Defendants.

NOW COME Robert (Bobby) Smith, Ronald D. Carnes, Richard A. Carter, and Bradford Mizell Lilly, the plaintiffs, on behalf of themselves and all others similary situated, and pursuant to Rule 56 of the Federal Rules of Civil Procedure move for summary judgment against the defendants Vernon Lee Bounds, Commissioner, State Department of Corrections, and Stanley Blackledge, Warden, Central State Prison, Raleigh, North Carolina, and in support thereof respectfully show to the Court;

1. That a verified complaint was filed by the plaintiffs on May 25, 1972.

2. That defendants filed a motion to dismiss on June 16, 1972.

3. That this Court on August 11, 1972, filed a memorandum opinion and order dismissing allegations numbers 3, 4, 5 and 6 as numbered in that Order, and instructing the defendants to

answer fully allegations numbers 1 and 2 as numbered by the Court.

4. That allegation (1) states that the defendants are depriving plaintiffs of their First Amendment right of freedom of access to the Courts by not providing them with a law library at Central Prison or at any other institution in the North Carolina Department of Corrections.

5. That allegation (2) states that the defendants are denying plaintiffs equal protection of the law under the Fourteenth Amendment by not providing poor and indigent prisoners with a law library.

6. That the said memorandum opinion and order recognized that the materials supplied to the prisoners in Central Prison and the rest of the North Carolina Deparment of Corrections are not sufficient to insure that inmates have reasonable access to the Courts.

7. That this Court in the memorandum opinion and order instructed the defendants to demonstrate any overwhelming State interest that might justify depriving inmates of reasonable access to the Courts.

8. That the defendants filed an answer to said complaint on September 18, 1972.

9. That the State has failed to demonstrate such an overwhelming State interest in depriving plaintiffs of their right to a law library, alleging only in the *TENTH DEFENSE* that to do so would place a heavy expense on the State.

10. That the expense here alleged is an insufficient State interest to justify denying to plaintiffs law libraries which would guarantee them reasonable access to the Courts.

11. That the State has failed in all defenses stated in the answer to respond to plantiffs' allegation that poor and indigent prisoners are denied equal protection of the law under

the Fourteenth Amendment by not providing them with law libraries.

12. That plaintiffs who cannot afford to hire legal assistance outside of the prison, and are not provided any legal materials within the prison, are denied equal protection of the law under the Fourteenth Amendment because they are denied the opportunity to adequately prepare writs of habeas corpus for the Court.

13. That the State in all defenses stated has failed to allege a reasonable alternative to law libraries that is currently available to indigent inmates attempting to prepare writs of habeas corpus.

14. That due to the defendants' failure to respond to plaintiffs' allegations numbers (1) and (2), and to defendants' failure to allege sufficient State interest to justify the denial of plaintiffs' constitutional rights to reasonable access to the Courts and equal protection of the law, and to the defendants' failure to allege a constitutionally sound, reasonable alternative to law libraries that is presently available to the plaintiffs, there is no question of material fact to be decided by a jury on these issues.

WHEREFORE, the plaintiffs move for summary judgment, that an injunction issue permanently enjoining the Commissioner, Vernon Lee Bounds, and Warden Stanley Blackledge from denying them a law library and that the cost of this action be taxed against the defendants.

Howard E. Manning
Of Manning, Fulton & Skinner
Attorney for Plaintiffs
801 Wachovia Bank Building
P. O. Box 1150
Raleigh, North Carolina 27602
Telephone 919-828-8295

CERTIFICATE OF SERVICE

This is to certify that the foregoing motion for summary judgment was served upon the defendants by enclosing a copy thereof in an envelope, postage prepaid, deposited in the United States Mail and addressed as follows: Mr. Jacob L. Safron, Assistant Attorney General, North Carolina Department of Justice, P. O. Box 629, Raleigh, North Carolina 27602.

This 18 day of June, 1973.

Howard E. Manning
Of Manning, Fulton & Skinner
Attorney for Plaintiffs
801 Wachovia Bank Building
P. O. Box 1150
Raleigh, North Carolina 27602
Telephone 919-828-8295

* * * * *

EXCERPTS FROM COMPLAINT FILED APRIL 5, 1973

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

CIVIL ACTION NO. 4277

DONALD W. MORGAN, FRANKLIN D. STRADER AND JOHN H. RUSSELL, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED,	)	COMPLAINT FOR INJUNCTION, DECLARATORY JUDGMENT AND OTHER APPROPRIATE RELIEF
Plaintiffs	)	
vs.	)	
R. L. TURNER, SUPERINTENDENT OF ODOM CORRECTIONAL INSTITUTION OF THE NORTH CAROLINA DEPARTMENT OF CORRECTION,	)	
Defendant.	)	

Plaintiffs complain against the defendant as follows:

I.

JURISDICTION

1. This is a class action for a declaratory judgment that defendant is violating the constitutional rights of plaintiffs by depriving them, among other things, of their First and Fifth Amendment rights of freedom of access to the courts by refusing and failing to provide them with any law library, writ room or legal reference material whatsoever with which to insure their meaningful access to the courts at Odom Correctional Institution contrary to *Gilmore v. Lynch*, 319 F. Supp. 105 [N.D. Cal. 1970]; aff'd sub nom. *Younger v. Gilmore*, 404 U.S. 15, 50 L.E. 2d 142, 92 S.Ct. .... (1971); and for a permanent injunction preventing defendant from continuing to violate plaintiffs' rights, while acting under color of state law.

2. Jurisdiction is conferred on this Court under 28 U.S.C. § 1343 providing for jurisdiction over claims arising under 42 U.S.C. § 1983 and 1985; and 28 U.S.C. § 2201 and 2202 relating to declaratory judgments.

II

THE PARTIES

3. Plaintiffs are citizens of the United States and are indigent state prisoners at Odom Correctional Institution of the State Department of Correcion, serving sentences imposed against them in the Superior Courts of North Carolina.

4. Plaintiff Morgan has been incarcerated since September 26, 1969 and is presently serving two sentences totaling fifteen (15) to twenty (20) years imprisonment. Plaintiff Strader has been incarcerated since February, 1969 and is presently serving sentences totalling twenty-six (26) to thirty (30) years. Plaintiff Russell has been incarcerated since October, 1971 and is serving five (5) to ten (10) years confinement.

5. The plaintiffs are representative of a class within the meaning of Rule 23, Federal Rules of Civil Procedure. The class consist of all convicted state prisoners incarcerated at Odom Correctional Institution. The class is an ongoing one and includes state prisoners who will be incarcerated at Odom Correctional Institution in the future. The class is so numerous that joinder of all members is impracticable. The members of the class are readily identifiable from defendants' records. There are questions of law and fact common to the class. The plaintiffs will fairly and adequately protect the interest of the class.

6. Defendant R. L. Turner is Superintendent of Odom Correctional Institute and is responsible for the administration of Odom Correctional Institution. He is sued in his official capacity.

III

STATEMENT OF CLAIM

7. Plaintiffs are incarcerated at Odom Correctional Institution mainly because of their writ-writing activities and continued use of the courts during their imprisonment.

8. Plaintiffs allege upon information and belief that the defendant, R. L. Turner, by his intentional acts and omissions is violating their constitutional rights in that:

a. Defendant Turner is depriving them of their First and Fifth Amendment rights of freedom of access to the courts by refusing and failing to provide indigent plaintiffs and the class they represent with any law library, writ room or legal reference material whatsoever, with which to insure meaningful access to the courts, at Odom Correctional Institution, contrary to the holding in the 1970 case of Gilmore v. Lynch, 319 F. Supp. 105 [N.D. Cal. 1970].

****

MOTION TO DISMISS
FILED JUNE 6, 1973

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

DONALD W. MORGAN, FRANKLIN D. STRADER and JOHN H. RUSSELL, on behalf of themselves and all others similarly situated, Plaintiffs	)	CIVIL NO. 4277
v.	)	
R. L. TURNER, Superintendent of Odom Correctional Institution of the North Carolina Department of Correction, Defendant	)	

MOTIONS TO DISMISS
AND FOR SUMMARY JUDGMENT

TO: HONORABLE JOHN D. LARKINS, JR., JUDGE, PRESIDING OVER THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NORTH CAROLINA — RALEIGH DIVISION:

NOW COMES the Defendant, R. L. Turner, formerly Superintendent of the Odom Correctional Institute of the North Carolina Department of Correction, by Robert Morgan, Attorney General of North Carolina, and Jacob L. Safron, Assistant Attorney General, his attorneys, who move to dismiss the Complaint filed herein by the Plaintiffs entitled, "COMPLAINT FOR INJUNCTION, DECLARATORY JUDGMENT AND OTHER APPROPRIATE RELIEF", and as reason therefor respectfully show unto the Court:

1. That, this Honorable Court lacks jurisdiction over the subject matter of the Complaint.

2. That, the contentions set forth in the Complaint are conclusory in nature and fail to adequately allege facts in support thereof.

3. That, the contentions set forth in the Complaint fail to state a claim upon which the relief sought can be granted.

MOTION FOR SUMMARY JUDGMENT

The Defendant moves the Court, in accordance with the provisions of Rule 56 of the Federal Rules of Civil Procedure, to enter Summary Judgment in his favor; this Motion being made upon the grounds that the Plaintiffs' Complaint and other matters of record set forth and attached to the Memorandum of Law submitted by the Defendant reveals that he is entitled to Summary Judgment as a matter of law.

The Defendant alleges in support of his Motion for Summary Judgment:

1. That, the defendant adopts and again alleges the matters and things previously alleged and set forth above as a part of this Motion.

2. That, there are no genuine issues of material facts existing which are determinative of any right or duty which the Defendant owes the Plaintiffs, and, as a matter of law, the Defendant is entitled to Summary Judgment.

3. That, there are no genuine, relevant or material facts as to the deprivation of any constitutional rights of the Plaintiffs, and, therefore, no cause of action exists in their favor.

4. That, this action be dismissed and that any motion to dismiss be granted for any other lawful reason or ground that may pertain to this action.

Respectfully submitted,

ROBERT MORGAN
ATTORNEY GENERAL
Jacob L. Safron
Assistant Attorney General

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of June, 1973, a copy of the foregoing Motions to Dismiss and for Summary Judgment, together with Memorandum in Support of Motions to Dismiss and for Summary Judgment, were mailed, postage prepaid, to Howard E. Manning, Esquire, Court-appointed Council for Plaintiffs, Post Office Box 1447, Raleigh, North Carolina — 27602.

Jacob L. Safron
Assistant Attorney General

* * * * *

EXCERPT OF AFFIDAVIT OF DONALD E. BATTON FILED JUNE 6, 1973

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF NORTH CAROLINA

RALEIGH DIVISION

Civil Action No. 4277

Donald W. Morgan, Franklin D. Strader and John H. Russell, on behalf of themselves and all others similarly situated, Plaintiffs	)	
vs.	)	AFFIDAVIT
R. L. Turner, Superintendent of Odom Correctional Institution of the North Carolina Department of Correction, Defendant	)	

Donald E. Batton, being duly sworn, says:

That he is a Correctional Officer of the State Department of Correction and is the Assistant Superintendent of the Odom Correctional Institute located at Jackson, North Carolina. That, as such, under the supervision and authority of the

Superintendent, he exercises his authority and duties as Assistant Superintendent. That at the times mentioned in the said Civil Action, he had occasion to see said plaintiffs.

That there is no law library at this institution. However, inmates are furnished materials, ie, paper, pencils, and carbon paper to prepare writs and petitions. Should the inmate lack the knowledge and ability to prepare his writs and petitions. he is permitted to contact and obtain assistance from inmates who are knowledgeable. This the petitioner may do at any time when not engaged in assigned working tasks. Writs and petitions may be prepared in the dormitories or in the institution library or dining room if the petitioners so request.

That a notary is present at the institution five days per week from 8:00 A.M. until 5:00 P.M., and on every third weekend. That inmates wishing to have writs or petitions notarized bring them to the mail room, where the notary is located. If there are no additional copies available, the writ or petition is copied immediately and returned to the inmate. Copies, in accordance with guidebook instructions are sent to the main file at headquarters, the Attorney General's office, one for unit file and one for inmate's field jacket. Only writs and petitions are copied as above.

* * * * *

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

DONALD W. MORGAN, FRANKLIN D. STRADER and JOHN H. RUSSELL, on behalf of themselves and all others similarly situated, Plaintiffs,

VS.

R. L. TURNER, Superintendent of Odom Correctional Institution of the North Carolina Department of Correction, Defendants.

Civil Action No. 4277
MOTION FOR SUMMARY JUDGMENT

NOW COME Donald W. Morgan, Franklin D. Strader, and John H. Russell, on behalf of themselves and all others similarly situated, plaintiffs in the above entitled action, and pursuant to Rule 56 of the Federal Rules of Civil Procedure move for summary judgment against the defendant R. L. Turner, Superintendent of Odom Correctional Institution of the North Carolina Department of Correction, and in support thereof respectfully show to the Court:

1. That a verified complaint was filed by the plaintiffs on January 23, 1973, and that the defendant failed to file an answer to the complaint but filed a motion to dismiss and for summary judgment on June 6, 1973.

2. That plaintiffs allege in Section III, paragraph 8, subparagraph (a) of the complaint that the defendant is depriving them of their First and Fifth Amendment rights of freedom of access to the Courts by failing to provide indigent prisoners with any law library or legal reference material to insure them meaningful access to the Courts.

3. That defendant in his motion for summary judgment and in all other matters of record set forth and attached to his

memorandum of law, does not deny that there are no law libraries for indigent prisoners.

4. That the affidavit of Donald E. Batton attached to defendant's motion to dismiss and motion for summary judgment states that there is no law library provided at Odom Correctional Institution.

5. That defendant does not deny that he presently fails to provide a reasonable alternative to law libraries to aid indigent inmates in the preparation of writs of habeas corpus or other petitions to the Court.

6. That defendant does not allege nor does there exist a sufficient State interest to justify the denial of indigent inmates of the First Amendment right of reasonable access to the Courts.

7. That in the absence of an overwhelming State interest in denying indigent prisoners law libraries or other reasonable alternatives to insure them reasonable access to the Courts, the First Amendment requires the State to provide adequate law libraries for all inmates.

8. That based on the foregoing and with respect to the allegations relating to the issue of the failure of the State to provide indigent inmates with reasonable access to the Courts, there are no material questions of fact raised by the pleadings.

9. That it is necessary for the plaintiffs to have law libraries or other reasonable alternatives furnished for them to enable them to better pursue the other allegations raised in the complaint.

WHEREFORE, the plaintiffs move for summary judgment, that an injunction issue requiring R. L. Turner, Superintendent of Odom Correctional Institution of the North Carolina Department of Correction to provide them with a law library or other reasonable alternatives to insure them reasonable access

to the Courts, and that the costs of this action be taxed against the defendant.

Howard E. Manning
Of Manning, Fulton & Skinner
Attorney for Plaintiffs
801 Wachovia Bank Building
P. O. Box 1150
Raleigh, North Carolina 27602
Telephone 919-828-8295

* * * * *

EXCERPTS FROM COMPLAINT FILED FEBRUARY 23, 1973

NORTH CAROLINA WASHINGTON COUNTY	UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NORTH CAROLINA NEW BERN DIVISION
JOHN HARRINGTON ALONZO WATTS CLIFTON SPEIGHT WILLIAM RYDER IRA DAVIS RONNEY McBRIDE RAY FORBES Plaintiff PRO SE -vs- JAMES HOLSHOUSER, Governor STATE OF NORTH CAROLINA; V. LEE BOUNDS, Commissioner N. C. DEPARTMENT OF CORRECTIONS; DR. STANLEY BLACKLEDGE WARDEN, CENTRAL PRISON; F. R. MOORE, Sergeant, CENTRAL PRISON FRANKLIN L. MAHAN REGIONAL SUPERINTENDENT M. S. LEE, CAPTAIN WASHINGTON COUNTY UNIT 3560 CRESWELL, NORTH CAROLINA Respondents	790 CIVIL COMPLAINT TO INSTITUTE CIVIL ACTIONS SUIT IN EQUITY; AND APPLICATION FOR A PERMANENT INJUNCTION (IN FORMA PAUPERIS)

TO: THE HONORABLE UNITED STATES DISTRICT JUDGE FOR THE UNITED STATES DISTRICT COURT OF THE EASTERN DISTRICT OF NORTH CAROLINA, NEW BERN DIVISION:

JURISDICTION

This Civil Complaint To Institute Civil Action; Suit in Equity and Application For A Permanent Injunction is being presented pursuant to the 1871 Civil Rights Act, Codified as Title 42, Section 1983 of the United States Code; this Courts original jurisdiction is invoked under Title 28; Section 2241 of the United States Code; Article 1, Section 9; the 8th and 14th Amendments to the United States Constitution.

NOW COMES, JOHN HARRINGTON, ALONZO WATTS, CLIFTON SPEIGHT, WILLIAM RYDER, IRA DAVIS, RONNEY McBRIDE, and RAY FORBES, the Plaintiffs Pro Se, in and for this cause of action, who respectfully says before this Honorable Court;

(1)

That the Plaintiffs are presently confined and restrained of their liberty at Creswell Prison Unit, Washington County (Unit Number 3560) Creswell, North Carolina and under the supervision of above mentioned unit and *M.S. LEE.*

* * *

The Plaintiffs show that no writ room facilities are provided at Creswell Prison Unit nor are paper, carbon paper, law books, photocopier, typewriter, or facilities such as table and environment conductive to pursuit of such an interest, exist for an individual seeking remedy of a conviction. Furthermore, as M.S. LEE Captain or Superintendent has not made such facilities, supplies and instruments available, the Plaintiffs have suffered much duress in their attempt to seeking remedy to a conviction, that the Plaintiffs contend that it in itself to be vindictive,

cruel, harsh and unusual punishment as is forbidden by the 8th Amendment to the United States Constitution.

* * *

Wherefore, the Plaintiffs have presented before this Honorable Court his allegations and contentions of when and where the defendants named herein were/are denying and abridging rights secured to the Plaintiff by the United States Constitution. It is respectfully put forth that the Honorable Court will issue the following Pretrial Court Orders:

1.) That the Court accept such petitions as sent as officials refuse or cannot supply paper and supplies to make necessary copies;

2.) ALLOW Plaintiffs to proceed in FORMA PAUPERIS;

3.) That WRIT ROOM be established within thirty (30) days at Creswell Prison Unit, Rt. 2, Box 137, Washington County Unit 3650, Creswell, North Carolina, and aside of facilities, that instruments such as photocopier, typewriter, papers, pens, Law Books (both State and Federal) be common to the area to be designated as Writ Room. Also, with specifications that the Inmates run, control and maintain Writ Room, its hours, et al.;

****

AFFIDAVIT OF M. J. ROTHENBERGER FILED MARCH 20, 1973

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
NEW BERN DISTRICT

Civil No. 790

John Harrington)
Alonzo Watts)
Clifton Speight)
William Ryder)
Ira Davis)
Ronney McBride)
Ray Forbes,)
Plaintiff Pro Se) AFFIDAVIT
)
vs)
)
James Holshouser, Governor)
State of North Carolina;)
)
V. Lee Bounds, Commissioner)
N. C. Department of Correction;)
)
Dr. Stanley Blackledge)
Warden, Central Prison;)
)
F. R. Moore, Sergeant,)
Central Prison)
)
Franklin L. Mahan)
Regional Superintendent)
)
M. S. Lee, Captain)
Washington County Unit 3560)
Creswell, North Carolina,)
Respondents)

M. J. Rothenberger, being duly sworn, says:

That he is a Correctional Officer of the State Department of Correction of the rank of Lieutenant, and is now the Acting Superintendent of the Washington County Subsidiary located at Creswell, North Carolina. That, as such, he is responsible for the operations of said subsidiary and also for the care and custody of the inmates assigned to said subsidiary. At the times mentioned in said Civil Action he was Assistant Superintendent of said subsidiary.

That at no time have the plaintiffs been denied the right to prepare writs, petitions, or other papers to petition the courts. Paper and supplies are furnished when requested. At one time, due to the unusual demand for paper, the supply was exhausted, but as soon as delivery was made on the submitted requisitions the paper was again given those requesting it.

That prior to the escape by Plaintiffs Watts, McBride, Speight, Ryder and Davis only Plaintiff Speight was confined in punitive segregation. That after the escape on January 22, 1973, and the captures on the 23rd of January, 1973, the escapees were placed in administrative segregation pending transfer to Central Prison. That each of the escapees were recommended for close custody after the escape and capture. That plaintiff escapees received the regular treatment prescribed for administrative segregation inmates, full meals, canteen privileges, and others.

That Plaintiff Speight was seen by the subsidiary physician whenever requested by him. A copy of the sick call cards is appended.

That the disciplinary proceedings against Plaintiff Harrington of a home made weapon, a knife or dagger made apparently from a pitchford tine. That Plaintiff Harrington was advised of his rights and requested Sergeant E. I. Smith to help him.

That there are no law books, typewriters nor a writ room available at this subsidiary for the use of inmates seeking to

submit petitions. That each is supplied with the necessary paper, and other supplies as needed.

This the 14 day of March, 1973,

Marvin J. Rothenberger
Affiant

Sworn to and subscribed before me

this 14 day of March, 1973.

Mary V. Pharr
Notary Public

My commission expires: 12-15-74

* * * * *

OPINION FILED SEPTEMBER 23, 1974

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 74-1320

John Harrington and
Ray Forbes,

Appellants,

versus

James Holshouser, et al.,

Appellees.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. John D. Larkins, Jr., District Judge.

Argued September 5, 1974. Decided September 23, 1974

Before Haynsworth, Chief Judge, and Russell and Widener, Circuit Judges.

Barry Nakell [Court-appointed counsel] and Patrick Antrim (Third-year law student) for Appellants; Jacob L. Safron, Assistant Attorney General of North Carolina, (Robert Morgan, Attorney General of North Carolina, on brief) for Appellees.

PER CURIAM:

Plaintiffs filed suit under § 1983, claiming that prison authorities denied them access to the courts by failing to provide any legal research materials and some supplies necessary for writing complaints. The District Court granted a summary judgment

in favor of the defendants. In *Smith v. Bounds*, Memo. Opinion No. 74-3052 (E.D.N.C. May 30, 1974), the District Court upheld a similar claim against the North Carolina prison system. That court approved a plan for a prison library system and is now considering the necessity of establishing a prisoners' attorney program. Without expressing any opinion on the merits of the issues presented here, we vacate the District Court's order and remand with the suggestion that the cases be consolidated in order to allow plaintiffs to participate in fashioning a remedy, if the District Court should find relief appropriate.

VACATED AND REMANDED.

Supreme Court, U. S.
FILED
FEB 9 1976
MICHAEL RODAK, JR., CLERK

In The

Supreme Court of the United States

October Term, 1975

N. 75-915

VERNON LEE BOUNDS, etc. et al.,

Petitioners

v.

ROBERT (BOBBY) SMITH, et al.,

Respondents

R. L. TURNER, etc.,

Petitioner

v.

DONALD W. MORGAN, et al.,

Respondents

JAMES HOLSHOUSER, etc., et al.,

Petitioners

v.

JOHN HARRINGTON, et al.,

Respondents

SUPPLEMENTAL APPENDIX

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

RUFUS L. EDMISTEN
Attorney General of North Carolina
JACOB L. SAFRON
Special Deputy Attorney General

Post Office Box 629
Raleigh, North Carolina 27602

COUNSEL FOR PETITIONERS

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DONALD W. MORGAN, et al.	)	of Appeals for the
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[1] All Memorandum Opinions and Orders contained in this Supplemental Appendix were filed in the United States District Court for the Eastern District of North Carolina—Raleigh Division—except in the case of HOLSHOUSER v. HARRINGTON, which was filed in the Washington Division of the Court.

JAMES E. HOLSHOUSER, etc., et al. v. JOHN HARRINGTON, et al.	)	No. 790 Washington Division No. 74-2380 United States Court of Appeals for the Fourth Circuit

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In The

Supreme Court of the United States

October Term, 1975

N. 75-915

VERNON LEE BOUNDS, etc. et al.,
Petitioners

v.

ROBERT (BOBBY) SMITH, et al.,
Respondents

R. L. TURNER, etc.,
Petitioner

v.

DONALD W. MORGAN, et al.,
Respondents

JAMES HOLSHOUSER, etc., et al.,
Petitioners

v.

JOHN HARRINGTON, et al.,
Respondents

SUPPLEMENTAL APPENDIX

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA RALEIGH DIVISION

No. 3052 Civil

ROBERT (BOBBY) SMITH, RONALD D. CARNES, RICHARD A. CARTER, AND

BRADFORD MIZELL LILLY, on behalf of themselves and all others similarily situated,

Plaintiffs

v.

VERNON LEE BOUNDS, Commissioner, State Department of Corrections, and STANLEY BLACKLEDGE, Warden, Central State Prison, Raleigh, North Carolina,

Defendants

MEMORANDUM OPINION AND ORDER

LARKINS, District Judge:

This cause comes before the Court in an action brought pursuant to the provisions of Title 42, United States Code, Section 1983, with jurisdiction of the Court based upon Title 28, United States Code, Section 1343. The Plaintiffs are all inmates within the North Carolina Department of Corrections, and they have brought this action under the provisions of Rule 23, Federal Rules of Civil Procedure, as a class action on behalf of themselves and all others similarly situated within the North Carolina Prison System. In substance, the Plaintiffs allege that they are being deprived of their rights under the First, Fourteenth, and Eighth Amendments of the United States Constitution due to the methods of operation of the writ room at Central Prison in Raleigh. North Carolina. The Defendants deny that these Plaintiffs, or any member of their class, have been denied any federally protected rights, and move the Court to dismiss the complaint without hearing, largely on jurisdictional grounds.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiffs' allegations in this case are generally as follows: 1) That the Defendants are depriving them of their First Amendment right of freedom of access to the Courts by not

providing them with a law library at Central Prison, or at any other institution in the North Carolina Department of Corrections, 2) That the Defendants are denying them equal protection of the law under the Fourteenth Amendment by not providing poor and indigent prisoners with a law library, 3) That Defendants are denying them the right to assist illiterate inmates in the preparation and filing of legal petitions in violation of the dictates of *Johnson v. Avery*, 393 U. S. 483 (1969), 4) That the Defendants are operating the writ room at Central Prison in such a manner so as to cause undue delay in the filing of Court papers and civil suits, 5) That the Defendants are denying them the right to use typewriters to prepare petitions to the Court, 6) That all of the above treatment and allegations constitute cruel and unusual punishment as to these Plaintiffs.

Allegations 1 and 2 will be considered together for the purposes of this opinion, since they clearly relate to the same basic claim. Central Prison is the only institution within the North Carolina Department of Corrections which enjoys the use of a "writ room" where prisoners may prepare writs and petitions for presentation to the Courts. The writ room could not be said to contain all of the materials of a law library, nor could it be said to contain all of the resources of a lawyer's office. The Defendants, in their answer, have included a list of the volumes and materials which are available in the writ room for inmate research. These materials are as follows: 1) United States Supreme Court Reports (Lawyer's Edition) 1966-1971, 2) United States Supreme Court Advance Sheets 1966-1971, 3) North Carolina General Statutes, Vols. 1-A, 1-B, 1-C, 1-D, 2-A, and 4-A, 4) Advance Legislative Service to General Statutes, Vols. 1-15, 5) Law Textbooks: Cases and Materials on Criminal Law and Procedure (Remington), Modern Criminal Procedure (Hall and Kasimar), The Administration of Criminal Justice (2nd Ed., Sullivan, Hardin, Houston, Lacy, Murray, and Pugh), McCormick's Case on Evidence (3rd Ed.), and Criminal Law and Its Processes (Paulsen and Kadish).

The Plaintiffs claim that, as thus constituted, the writ room materials and volumes are insufficient to provide them with enough materials to insure their access to the Courts as guaranteed by the First Amendment to the Constitution of the United States, and that because of their indigency and condition as prisoners, they are deprived of equal protection of the law under the Fourteenth Amendment to the Constitution of the United States in that they are not provided with an ample law library that they can use to present their claims to the Court.

Of course, it is evident that the simple invocation of these phrases will not carry the day for the Plaintiffs, for it is clear that they must show further that these rights are not only affected by the policies and regulations under attack, but are infringed upon to such a degree as to render any justifications advanced by the State for the limitation of such a library inadequate and unreasonable as a matter of law.

In the present case, there is no regulation which expressly limits the size or makeup of the writ room at Central Prison or at any other Prison within the North Carolina System. The available materials are limited in fact, rather than by any administrative directive.

It is apparent to this Court that the materials available at the writ room in Central Prison, and throughout the entire Prison System in the State of North Carolina, are, at best, severely limited. There are no volumes of North Carolina case law, no volumes of Federal case law other than the United States Supreme Court reports for a period of 5 years, no complete set of North Carolina Statutes, and no set of United States Statutes of any kind. The volumes available would provide meager fare for a lawyer who is trained in his profession, and even more meager fare for an inmate who has no legal training to assist him in discerning how to file what petitions, and what to include in them. This Court takes notice that more than mere facts are necessary in order to

file a petition for relief by way of habeas corpus, for example. A prisoner should know the rules concerning venue, exhaustion of remedies, jurisdiction, and proper parties respondent. All too often, such points are raised in the respondent's brief and answer, and the prisoner, who had no way of realizing his initial mistakes, is left with the task of filing a traverse to cited authority which he has no means of obtaining. He should know which facts are significant to the Court, and which facts are unnecessary and confusing.

The Defendants in the present suit point out to the court that the Plaintiffs in the present suit have filed a great many petitions and suits in this Court and in other Courts since their incarceration in the North Carolina Department of Corrections. This Court fully agrees that this is so, and that, if volume is to be the test, these Plaintiffs are among the most prolific writ writers in the system. But this Court feels that it is not volume alone which should be used to test whether or not a prisoner is being deprived of his access to the Courts. Access does not mean the ability to file petitions or suits, but it rather means the ability to file *meaningful* petitions and suits. As the Court in *Gilmore v. Lynch*, 319 F. Supp. 105 (N.D. Cal. 1970), stated: "It encompasses all the means a defendant or petitioner might require to get a fair hearing from the judiciary for all charges brought against him or grievances alleged by him." at p. 110.

The days of locking prisoners away in their cell, never to be heard from again are all but over, and, although it is elementary that prisoners are necessarily deprived of some of their basic rights, it is well settled that inmates cannot be deprived of all of their rights merely because they have been convicted of a crime. Surely, reasonable access to the Courts is one right which ought not to be limited by the fact of penal incarceration. A prisoner, perhaps more than the everyday citizen, has great need for meaningful access to the Courts. It is the only method for him to collaterally attack his conviction; and the only method for him to seek redress for wrongs done to him

while in prison. Admittedly, this Court decides a great number of seemingly frivolous petitions and cases submitted by prisoners each year. But this is a small price to pay for the petitions and cases which do present valid claims where the deprival of constitutional rights is apparent. Perhaps one of the reasons for the filing of so many frivolous petitions is that the prisoners do not have available enough legal research material to determine what claims are valid, and which are not.

In summary, this Court feels that the Plaintiffs herein have presented a prima facie case of their being deprived of reasonable and meaningful access to the Courts. It is clear to this Court that the materials supplied to prisoners in Central Prison, and the rest of the North Carolina Department of Corrections are not sufficient to insure that inmates have such access to the Courts of North Carolina, or of the United States. It appears to the Court, however, that, in light of the fact that the State has not filed a comprehensive answer to this claim and has only filed a motion to dismiss the claim, the Attorney General should be provided with an opportunity to fully respond to this allegation. If the State can demonstrate to the Court some overwhelming State interest in depriving inmates of such a right, this Court must take that into consderation before any further action.

Plaintiffs have also advanced an equal protection argument concerning the lack of available legal research material to them within the North Carolina Department of Corrections. This Court also feels that the Plaintiffs have presented a prima facie case in this regard, and directs that the Defendants herein fully respond to that argument as well. Specifically, it appears to this Court that the deprivation of equal protection in this case is based upon the inability of an indigent prisoner to have access to law materials and books on the same basis as an affluent prisoner or a member of society who can afford to employ a lawyer to petition the Court for the redress of his grievances. The argument may be advanced in this regard that there is no deprival of a *right* in this case, but rather only

the withholding of a privilege. In this respect, the Court feels that there is no privilege involved, but rather the right of a poor and uneducated prisoner to the tools necessary for an adequate hearing in both the State and Federal Courts. See VanAlstyne, *The Demise of the Right-Privilege Distinction in Constitutional Law*, 81 Harv. L. R. 1439 (1968).

The Supreme Court has recently upheld the decision of the District Court for the Northern District of California, sitting as a three Judge panel, in which a California Prison Regulation limiting the number and types of legal research materials available to inmates was declared unconstitutional. *Gilmore v. Lynch*, 319 F. Supp. 105 (N. D. Cal. 1970); *aff'd sub nom. Younger v. Gilmore*, ... U. S. ....., 30 L Ed 2d 142, 92 S. Ct ....., (1971). This Court feels that that case is directly on point and applicable to the present action, despite the fact that an actual regulation of the Prison Officials was involved which limited the legal materials available to inmates. In the present case, there is no such regulation, but it seems clear to this Court that the *Gilmore* case did not rest solely on the fact that there was a regulation, but rather, rested on the proposition that the lack of an adequate library deprived inmates of their access to the Courts, and denied them equal protection of the law. The fact of the regulation merely dictated the manner in which the suit was brought. In the present case, while there is no such regulation, it is clear that in actual fact there has been a severely inadequate legal library for inmates to use. The Court would also welcome arguments in this regard from the defendants.

Plaintiffs' remaining contentions appear to be meritless, and must be dismissed. Allegation #3 is without merit since the North Carolina Department of Corrections has no regulation or policy of discouraging inmates from preparing writs or petitions for other inmates. Plaintiffs do not allege that they have ever been deprived of their right to assist their fellow inmates, nor do they allege that they have ever been punished

for such activity. Allegation #4 is without merit since this Court has already upheld the device of the writ room as a means of regulating the time and method of prisoner writ writing. See *Ross v. White*, Civil No. 2901, Raleigh Div. (E.D.N.C., March 16, 1972). Allegation #5 is without merit since this Court does not require that Petitions be typewritten before being submitted to the Court, (*Britt v. Henry*, Civil No. 2576, Raleigh Div. (E.D.N.C., July 7, 1970)) and there is no constitutional right of inmates to be provided with typewriters. *Williams v. United States Department of Justice*, 433 F. 2d 958 (5th Cir. 1970). Allegation #6 fails to show any conduct which could possibly be construed by this Court or any other to be cruel and unusual punishment.

NOW THEREFORE, in accordance with the foregoing, it is

ORDERED, that the Defendants' motion to dismiss the Allegation #s 3, 4, 5, and 6, as numbered in this opinion, be, and the same is hereby ALLOWED, and

FURTHER ORDERED, that the Defendants' motion to dismiss Allegation #s 1 and 2, as numbered in this opinion, be, and the same is hereby, DENIED, and

FURTHER ORDERED, that the Defendants shall respond fully to the Allegation #s 1 and 2, as set forth in this opinion, within 30 days, and

FURTHER ORDERED, that the Clerk shall serve copies of this ORDER upon Robert (Bobby) Smith, Ronald D. Carnes, Richard A. Carter, and Bradford Mizell Lilly, 835 West Morgan St., Raleigh, North Carolina, as representatives of the class in this class action, and upon Jacob L. Safron, Assistant Attorney General, P. O. Box 629, Raleigh, North Carolina.

Let this ORDER be entered forthwith.

JOHN D. LARKINS, JR.
United States District Judge

Trenton, North Carolina
August 10th, 1972

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

ROBERT (BOBBY) SMITH, RONALD D. CARNES, RICHARD A. CARTER, and BRADFORD MIZELL LILLY, on behalf of themselves and all others similarly situated, Plaintiffs	CIVIL NO. 3052
vs.	
VERNON LEE BOUNDS, Commissioner, State Department of Correction, and STANLEY BLACKLEDGE, Warden, Central State Prison, Raleigh, North Carolina, Defendants	MEMORANDUM OPINION AND ORDER

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause coming before the Court in an action brought pursuant to the provisions of Title 42, United States Code, Section 1983, with jurisdiction of the Court based upon Title 28, United States Code, Section 1343. The plaintiffs are inmates within the North Carolina Department of Correction, and have properly brought this action under the provisions of Rule 23, Federal Rules of Civil Procedure, as a class action on behalf of themselves and all others similarly situated within the North Carolina prison system.

The average daily population of the North Carolina Department of Correction is 10,000 inmates housed in 80 prison units located in 67 counties within the State. Central Prison, located in Raleigh, is the only institution that presently provides a writ room or law library. The legal material available at Central Prison consists of the following:

1. The United States Supreme Court Reports (Lawyers Edition) from 1966 to 1971.

2. The United States Supreme Court Advance Sheets from 1966 to 1971.

3. The North Carolina General Statutes volumes 1A, 1B, 1C, 2A, 4A.

4. Advance Legislative Service to General Statutes volumes 1 through 15.

5. Law textbooks, Cases and Materials on Criminal Law and Procedure (Remington), Modern Criminal Procedure (Hall and Kasimar), The Administration of Criminal Justice (2nd Edition, Sullivan), Hardin, Houston, Lacy, Murray & Pugh, McCormicks Cases on Evidence (3rd Ed.) and Criminal Law and Its Process (Kadish and Paulson).

The plaintiffs allege that (1) defendants are denying them their First and Fourteenth Amendment guarantees of reasonable access to the Courts by not providing them with a library at Central Prison or at any other institution within the North Carolina Department of Correction and (2) that the defendants are denying them equal protection of the law under the Fourteenth Amendment by not providing poor and indigent defendants with a law library. The defendants contend that the plaintiffs are not denied reasonable access to the Courts or equal protection of the law due to the fact that the state provides reasonable alternatives to law libraries, and that even if plaintiffs were denied reasonable access to the Courts, there is sufficient State interest in economy to justify the denial. Plaintiffs' motion for summary judgment is now before this Court.

This Court has previously considered the merits of plaintiffs' allegations in a Memorandum Opinion and Order written in response to defendants' motion to dismiss. In that opinion, the feeling that the materials supplied to prisoners in Central Prison, and the rest of the North Carolina Department of Correction are not sufficient to insure inmates reasonable access to the Courts is clearly expressed by this Court. The

State, however, was granted the opportunity to fully respond to plaintiffs' allegations, and to demonstrate any compelling State interests that might justify such limitations on prisoner's rights. After careful consideration of that response, it remains clear to this Court that materials supplied to prisoners in Central Prison and the rest of the North Carolina Department of Correction are not sufficient to insure that inmates have reasonable access to the Courts of North Carolina or the United States. The pleadings, motions and other materials of record in this action stand as uncontradicted evidence of the limited availability of any legal material or other legal assistance available to indigent inmates seeking habeas corpus relief. Even though these inmates are not invariably entitled to counsel to assist in the preparation of their petitions, some "provisions must be made to insure that prisoners have the assistance necessary to file petitions which will in fact be fully considered by the Courts." *Gilmore v. Lynch*, 319 F. Supp. 105, 110 (N. D. Calif. 1970), aff'd per curiam sub. nom. *Younger v. Gilmore*, 404 U. S. 15 (1971). The State of North Carolina has not produced any evidence demonstrating that it provides the necessary assistance to guarantee its indigent prisoners that their petitions receive full consideration.

In the answer filed by the defendants, great length was given to illustrate each situation in which the State presently provides counsel for indigent prisoners. Despite these efforts, however, there is no indication of any assistance at the initial stage of preparation of writs and petitions which is under consideration in this action. For this reason, the Supreme Court's affirmance of *Gilmore v. Lynch*, supra in *Younger v. Gilmore*, supra, in which it was held that indigent prisoners were denied reasonable access to the Court by a prison regulation limiting the number of books available in prison law libraries, compels this Court to find as a matter of law that indigent prisoners in North Carolina attempting to prepare writs of habeas corpus are denied reasonable access to the Courts. The fact that the California prison law libraries were limited by regulation while

the North Carolina prisons are only limited in fact, is of no consequence. It is not the presence or absence of a regulation that is important, but rather, whether each inmate is provided reasonable access to the Courts as is guaranteed him by the First and Fourteenth Amendments. *Hooks et al v. Wainwright*, *Hooks v. Wainwright*, 352 F. Supp. 163 (M. D. Fla. 1972).

This Court is also presented with the question of whether indigent inmates are denied equal protection of the laws under the Fourteenth Amendment by the absence of an adequate law library or reasonable alternative. The Court has taken Judicial Notice of the fact that more than simple facts are necessary to adequately prepare petitions and writs of habeas corpus. A prisoner should know the rules and venue, jurisdiction and proper parties respondent. To obtain this information, indigent prisoners are restricted to whatever legal reference material is available to them in prison and any additional assistance they might obtain from other inmates. It is clear, therefore, that the indigent prisoner, or his inmate assistant, who is not provided a law library or some other form of legal assistance within the prison, is denied the same opportunity to petition the Courts that is available to more affluent prisoners and members of society at large who can afford to employ lawyers to petition Courts for redress of the prisoner's grievances.

The Court thus finds as a matter of law that plaintiffs have been denied reasonable access to the Courts and equal protection of the laws under the First and Fourteenth Amendments. The plaintiffs are granted summary judgment on these issues, and the defendants are enjoined from denying plaintiffs law libraries or reasonable alternatives to law libraries.

The appropriate relief to be ordered in this case, however, presents a difficult problem. This Court is cognizant of the fact that due to the regional nature of the North Carolina prison system, the installation and maintenance of law libraries in eighty prisons would place a substantial financial burden on

the State. However, law libraries are not the only means by which a State can provide prisoners reasonable access to the Courts. As stated in *Gilmore v. Lynch*, 319 F. Supp. 105, (N. D. Calif. 1970), Aff'd per curiam sub. nom. *Younger v. Gilmore*, 404 U. S. 15 (1971), "The alternatives open to the State are legion. It might authorize Public Defenders to help inmates on collateral proceedings. Or it could institute programs whereby law students and professors could aid the indigent convict." The alternatives available to North Carolina are also legion. This Court will not attempt to dictate precisely what course the State should follow. Whether it could most easily and economically install law libraries in all prisons or implement a system whereby attorneys, either centrally or regionally located, are made available to all indigent prisoners is a question best answered by the Department of Correction. The Court, thus enjoins the State from providing only limited law library facilities to inmates and charges the Department of Correction with the task of devising a Constitutionally sound program providing all inmates with reasonable access to the Courts and equal protection of the law.

Accordingly, it is ordered that the Department of Correction be enjoined from denying plaintiffs law libraries or reasonable alternatives to law libraries, and further that it file with this Court before September 15, 1973, at Trenton, N. C., comprehensive proposals for providing plaintiffs law libraries or reasonable alternatives to them. If the plaintiffs desire oral argument on the sufficiency of the new proposals, they will move for a hearing thereon. Otherwise the Court will entertain written briefs and make such further decision as it deems necessary.

JOHN D. LARKINS, JR.
United States District Judge

Dated at:
Trenton, North Carolina
August 15, 1973

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

RALEIGH DIVISION

No. 3052 CIVIL
No. 4277 CIVIL

ROBERT (BOBBY) SMITH, RONALD D. CARNES, RICHARD A. CARTER, and BRADFORD MIZELL LILLY, on behalf of themselves and all others similarly situated,

Plaintiffs

v.

VERNON LEE BOUNDS, Commissioner, State Department of Correction, and STANLEY BLACKLEDGE, Warden, Central State Prison, Raleigh, N. C.,

Defendants

DONALD W. MORGAN, FRANKLIN D. STRADER and JOHN H. RUSSELL, on behalf of themselves and all others similarly situated,

Plaintiffs

v.

R. L. TURNER, Superintendent of Odom Correctional Institution of the North Carolina Department of Correction,

Defendant

MEMORANDUM OPINION and ORDER

LARKINS, District Judge:

This is a consolidated action under Title 42 U. S. C. §1983 in which plaintiffs, inmates in the North Carolina Department of Correction, have alleged that the State has denied them reasonable access to the courts by not providing law libraries at the various institutions. By ORDER in case 3052 dated August 15, 1973 and adopted in case 4277 on the same date

this Court held as a matter of law that the plaintiffs had been denied reasonable access to the Courts and equal protection of the laws under the First and Fourteenth Amendments. Plaintiffs were granted summary judgment on these issues, and the defendants were enjoined from denying plaintiffs law libraries or reasonable alternatives to law libraries. The State was ordered to present a proposal to the Court for providing inmates with law libraries or reasonable alternatives thereto.

The average daily population of the North Carolina Department of Correction is 10,000 inmates housed in 80 prison units located in 67 counties within the state. Most of the units are small and localized, which has been found most beneficial in work release and other rehabilitative programs. But the advantage of many units becomes a disadvantage when the question of law libraries is at issue. It is obviously economically unfeasible to place law libraries in every unit.

On December 19, 1973 the State filed a comprehensive proposal with this Court establishing seven core libraries in various units to serve a designated area. Each library would contain the following material:

North Carolina General Statutes
North Carolina Reports (1960 - present)
N. C. Court of Appeals Reports
Strong's N. C. Index
North Carolina Rules of Court (West)
United States Code Annotated (West)
  Title 18
  Title 28 §§ 2241-2254
  Title 28 Rules of Appellate Procedure
  Title 28 Rules of Civil Procedure
  Title 42 §§ 1891-2010
Supreme Court Reporter (West: 1960 - present)
Federal 2d Reporters (West: 1960 - present)
Federal Supplement (West: 1960 - present)
Black's Law Dictionary (West)

Sokol: Federal Habeas Corpus (Michie)
LaFave and Scott: Criminal Law Hornbook (2 copies) (West)
Cohen: Legal Research
Criminal Law Reporter (Bureau of National Affairs)
Palmer: Constitutional Rights of Prisoners

Selection of core libraries would be based on the number of petitions filed and geographic location. Each unit would be provided with request forms for inmates to set up appointments to work in the nearest library. In most cases a full day's use would be allotted. Transportation and housing would be provided.

In addition, two smaller core libraries containing the North Carolina Statutes and treaties would be established for prisoners on indefinite non-punitive segregation in Central Prison and for the Correctional Center for Women. Inmates in these categories could request volumes from a larger core library, probably the one at Central Prison.

The State proposed that each library would be housed in a well-lighted room large enough to contain all volumes plus those added by expansion. Writing material and typewriters would be provided. It was hoped that inmates could be trained to be typists and research assistants to aid their fellow prisoners. There would be access to zerox machines. Inmates only desiring forms could receive them by mail from the nearest library. Finally, inmates with deadlines, eg. those filing appeals, would be granted priority. Efficiently operated, the program would allow approximately 350 inmates per week access to the law libraries. In addition, those merely desiring forms could be more satisfactorily served.

On April 29, 1974 the plaintiffs directed their attorney to object to the proposed plan for seven core libraries, contending that the proposal is totally inadequate. Plaintiffs contend that the State must provide a law library in *each* prison unit unless a reasonable alternative is found. They also feel each

library should include West's North Carolina Digest, Modern Federal Practice Digest, the entire U. S. Code Annotated, U. S. Law Week, and Shepard's Citations in addition to that proposed by the State. They also desire a circulating library containing all North Carolina Reports, Federal Supplements and U. S. Reports prior to 1960 as well as Federal Rules Decisions and Corpus Juris Secundum.

Johnson v. Avery, 393 US 483, 21 L Ed 2d 718, 89 S. Ct. 747 (1969) held that it was fundamental that access of inmates to the courts to present their complaints may not be denied or obstructed. The Supreme Court found that a regulation prohibiting "jailhouse lawyers" was unconstitutional where no reasonable alternatives existed to help inmates in the preparation of petitions. The Supreme Court noted that public defenders, law students, and local attorneys provided an alternative plan to aid inmates, but did not pass judgment on such programs.

In the instant case the issue for determination is whether the library system proposed by the State is a reasonable and constitutional method of insuring access to the courts.

In *Novak v. Beto*, 453 F. 2d 661 (5th Cir. 1972), it was found that the mere hiring of two attorneys and three summertime law students to handle inmate petitions did not satisfy the burden of proving a reasonable alternative to inmate legal assistance. Information as to the number of inmates desiring legal assistance, the complication of issues, and the time involved for each petition would be in order. However it appeared that the Circuit Court approved the use of independent attorneys to aid inmates with their petitions as a reasonable alternative to inmate assistance.

Gilmore v. Lynch, 319 F. Supp. 105 (N. D. Cal. 1970), ruled that the California prison libraries were inadequate. Although each institution had various codes and reporters, no real research aids were present to help the inmates, eg. treatises or annotated codes. The Three-Judge Court held:

> "Indigents asking for habeas corpus relief are not invariably entitled to court-appointed counsel . . . but Johnson v. Avery, supra, note 1, makes it clear that some provision must be made to ensure that prisoners have the assistance necessary to file petitions and complaints which will in fact be fully considered by the courts."

The State of California was given time to expand their libraries or provide some new method of satisfying inmates' legal needs. This decision was affirmed by the Supreme Court. *Younger v. Gilmore* 404 US 15, 30 L Ed 2d 142, 92 S. Ct. 250 (1971).

In the instant case it appears to this Court that the proposal of seven core libraries is a feasible solution to much of the problem of inmate assistance. The books to be required are more comprehensive than those in California in that (1) the North Carolina Code is annotated; (2) Strong's Index is the North Carolina Lawyer's valuable research tool in supplementing the Code; (3) the titles of the U. S. Code to be ordered are annotated; and (4) the various treatises will provide necessary interpretation to the pertinent areas of law.

This Court does not feel inmates need the entire U. S. Code Annotated. Most of that code deals with federal laws and regulations that would never involve a state prisoner. This Court deals with volumes of prisoner petitions each year, and the titles suggested cover all areas of inmate grievance. It is suggested however that two copies of Title 28 § 2254 and Title 42 §§ 1891-1984 be required for each core library.

It is also the opinion of this Court that the cost of N. C. Digest and Modern Federal Practice Digest will surpass the usefulness of these research aids. They cover mostly areas not of concern to inmates. And the pertinent annotations in them can be found by a careful reading of U. S. Code Annotated. U. S. Law Week is of little use to the inmate as the Supreme Court Reports will have advance sheets. And Shepards Citations is of dubious value to the inmate. It is noted that if the

paper supplements and advance sheets to the N. C. Supreme Court Reports, the N. C. Court of Appeals Reports, Federal 2d, Federal Supplement, and the Supreme Court Reports are retained, each library will have the equivalent of two volumes of each book. No reporter advance sheets or advance volumes should ever be discarded.

The establishment of seven core libraries is both economically feasible and practicable. Most of the 80 units are too small to house a library, and many of the road units have few if any inmates filing petitions. Seven core libraries, well staffed, will be ample to insure each inmate the time to prepare his petitions. If the State guarantees the transportation for inmates at units without libraries and if appointments are set up fairly and impartially, there would be no reason the suggested library system would not work.

Therefore this Court approves the libary plan submitted by the State with the exception of the suggestions as to volumes made above.

Oftentimes inmates, even with a good library at their disposal, are not able to perfect their writs due to legal inexperience. An independent office of prison attorneys, similar to the *Novak v. Beto* situation, would vastly improve inmate access to the courts. Of course in the habeas corpus and § 1983 cases attorneys are appointed where a claim shows merit. And the Court is aware of the new North Carolina Grievance Commission and the effect it will have on prison litigation. However, help is needed in preparing initial claims. Although this court is not ordering the State to establish one or more independent attorneys for inmates, it is suggesting that both sides consider this issue and alternatives to it. Briefs should be submitted to the Court by July 1, 1974 on the issue of establishing an independent attorney office to assist prisoners in their legal matters. Then, if oral argument is necessary, a hearing will be held to determine whether such is necessary to comply with *Johnson v. Avery*.

NOW THEREFORE, in accordance with the foregoing, it is ORDERED, that the State's proposed prison library plan is APPROVED AS MODIFIED, and

FURTHER ORDERED, that counsel for all parties submit briefs by July 1, 1974 on the issue of an independent attorney office, and

FURTHER ORDERED, that the Clerk shall serve copies of this ORDER upon Counsel of Record.

Let this ORDER be entered forthwith.

JOHN D. LARKINS, JR.
United States District Judge

Trenton, North Carolina
May 29th, 1974

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

No. 3052 RALEIGH DIVISION
No. 4277 RALEIGH DIVISION
No. 790 WASHINGTON DIVISION

ROBERT (BOBBY) SMITH, RONALD D. CARNES, RICHARD A. CARTER, and BRADFORD MIZELL LILLY, on behalf of themselves and all others similarly situated,

Plaintiffs

v.

VERNON LEE BOUNDS, Commissioner, State Department of Correction, and STANLEY BLACKLEDGE, Warden, Central State Prison, Raleigh, N. C.,

Defendants

DONALD W. MORGAN, FRANKLIN D. STRADER and JOHN H. RUSSELL, on behalf of themselves and all others similarly situated,

Plaintiffs

v.

R. L. TURNER, Superintendent of Odom Correctional Institution of the North Carolina Department of Correction,

Defendant

JOHN HARRINGTON, RAY FORBES, et al.,

Plaintiffs

v.

JAMES HOLSHOUSER, Governor, State of North Carolina, et al.,

Defendants

MEMORANDUM OPINION and ORDER

LARKINS, District Judge:

This is a consolidated action under Title 42 U.S.C. Section 1983 in which plaintiffs, inmates in the North Carolina Department of Correction, have alleged that the State has denied them reasonable access to the courts by not providing law libraries at the various institutions. By ORDER in case No. 3052 dated August 15, 1973 and adopted in case No. 4277 on the same date, this Court held as a matter of law that the plaintiffs had been denied reasonable access to the Courts and equal protection of the laws under the First and Fourteenth Amendments. Plaintiffs were granted summary judgment on these issues, and the defendants were enjoined from denying plaintiffs law libraries or reasonable alternatives to law libraries. The State was ordered to present a proposal to the Court for providing inmates with law libraries or reasonable alternatives thereto.

By ORDER dated May 29, 1974 this Court approved with minor modifications the State's prison library program. However, the Court was concerned whether the inmates would be able to properly perfect their petitions even with a good library at their disposal. Therefore the Court requested all parties to submit briefs on the possibility of setting up an independent office of prison attorneys, similar to that in *Novak v. Beto*, 453 F. 2d 661 (5th Cir. 1972), or a reasonable alternative thereto. Briefs were submitted in July, 1974, however the issue of prison libraries was pending on appeal in *Harrington v. Holshouser*, No. 790 Washington Division (No. 74-1320 on appeal). Therefore this Court withheld ruling on case No. 3052 and case No. 4277 until the final disposition of *Harrington v. Holshouser*.

On September 23, 1974 the Fourth Circuit remanded *Harrington v. Holshouser* to be considered with case No. 3052 and case No. 4277. The three cases are now consolidated for ruling. The issue for determination is whether an independent attorneys office is necessary to assist prisoners in their legal matters.

The plaintiffs contend (1) that the State's library plan does not determine the need for assistance in using the library, (2) that a prison library system is of little value without some legal assistance, and (3) that an independent attorneys office would be more efficient and less costly in the long term. The State argues (1) that since North Carolina does not bar mutual inmate assistance, the library system is more than adequate to meet the standards of *Johnson v. Avery*, 393 US 483, 21 L Ed 2d 718, 89 S Ct 747 (1969), and (2) that *Ross v. Moffitt*, ... US ....., 41 L Ed 2d 341, 94 S Ct ..... (1974), holding that an indigent is not entitled to counsel for discretionary appeals, is applicable to inmate petitions.

This Court has carefully studied the file in this case and is of the opinion that the library system proposed by the State and approved by this Court as modified is a reasonable and constitutional method of insuring access to the courts. North Carolina has no statute barring inmate legal assistance. The library facilities, now inadequate, will be more adequate once the proposed plan is put into effect. The newly formed inmate grievance committee will give the inmates an avenue of relief that should eliminate the need for court action in many cases. Finally, should a petition be found to have possible merit, both the State and Federal Courts appoint counsel to assist the prisoners with their claims. (See N.C.G.S. § 7A-451 (a); This case is an example). Therefore it appears that under *Johnson v. Avery* the inmates in North Carolina will have reasonable and constitutional access to the Courts under the approved library plan.

The State has also cited *Ross v. Moffitt*. While inapplicable to the instant situation because it deals with counsel for indigents in discretionary appeals, some of the reasoning is appropriate. The Supreme Court found that while a State cannot arbitrarily cut off appeal rights for indigents while leaving open avenues of appeal for more affluent persons, appeal is a different matter from initial trial. At trial a defendant needs a shield to protect his presumption of innocence. On appeal he

takes the sword to upset the prior determination of guilt. Habeas corpus proceedings are similar attacks on the constitutionality of conviction brought at the inmate's discretion. Therefore an independent attorneys office would not be constitutionally mandated. As stated in *Ross v. Moffitt*, such legal assistance would be a State choice and not one for the Federal Courts:

> "We do not mean by this opinion to in any way discourage those States which have, as a matter of legislative choice, made counsel available to convicted defendants at all stages of judicial review. Some States which might well choose to do so as a matter of legislative policy may conceivably find that other claims for public funds within or without the criminal justice system preclude the implementation of such a policy at the present time. North Carolina, for example, while it does not provide counsel to indigent defendants seeking discretionary review on appeal, does provide counsel for indigent prisoners in several situations where such appointments are not required by any constitutional decision of this Court. Our reading of the Fourteenth Amendment leaves these choices to the State, and respondent was denied no right secured by the Federal Constitution when North Carolina refused to provide counsel to aid him in obtaining discretionary appellate review." See 41 L Ed 2d at 355, 356.

While holding that these plaintiffs do not have a constitutional right to have an independent attorneys office as well as a law library program, this Court feels that such an independent attorneys office would be a practical and efficient means of implementing the law library system. A staff of two or three attorneys would solve problems involving (1) poorly drawn writs, (2) consolidation of grounds, (3) proper filing in the proper courts, (4) proper exhaustion of remedies, and (5)

possible extortion by writ-writers. It could eliminate much of the administrative cost of both State and Federal court systems by diminishing the number of petitions, avoiding duplication (as in this case), clarifying contentions, and facilitating disposition. But, as stated in *Ross v. Moffitt*, this woud be a decision of the State Legislature, not one for this Court.

NOW THEREFORE, in accordance with the foregoing, it is

ORDERED, that Case No. 790-RE, Washington Division, *Harrington v. Holshouser*, be CONSOLIDATED with Case No. 3052, Raleigh Division, *Smith v. Bounds*, and Case No. 4277, Raleigh Division, *Morgan v. Turner*, and

FURTHER ORDERED, that the issue of establishing an independent attorneys office be RESOLVED IN FAVOR OF THE STATE, and

FURTHER ORDERED, that the Clerk shall serve copies of this ORDER upon Mr. Howard E. Manning, Attorney at Law, P. O. Box 1150, Wachovia Bank Bldg., Raleigh, N. C. 27602; and upon Mr. Jacob L. Safron, Assistant Attorney General, State of North Carolina, P. O. Box 629, Raleigh, N. C. 27602; and upon Mr. Donald W. Morgan, 835 West Morgan St., Raleigh, N. C. 27603; and upon Professor Barry Nakell, University of North Carolina, School of Law, Chapel Hill, N. C. 27514; and upon Mr. Norman B. Smith, Attorney at Law, 704 Southeastern Building, Greensboro, N. C. 27401; and upon the Fourth Circuit Court of Appeals; and upon Deputy Clerk, Washington Division, P. O. Box 1336, New Bern, N. C. 28560.

Let this ORDER be entered forthwith.

JOHN D. LARKINS, JR.
United States District Judge

Trenton, North Carolina
October 10th, 1974

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF NORTH CAROLINA

No. 3052 RALEIGH DIVISION
No. 4277 RALEIGH DIVISION
No. 790 WASHINGTON DIVISION

ROBERT (BOBBY) SMITH, RONALD D. CARNES, RICHARD A. CARTER, and BRADFORD MIZELL LILLY, on behalf of themselves and all others similarly situated,

Plaintiffs

v.

VERNON LEE BOUNDS, Commissioner, State Department of Correction, and STANLEY BLACKLEDGE, Warden, Central State Prison, Raleigh, N. C.

Defendants

DONALD W. MORGAN, FRANKLIN D. STRADER and JOHN H. RUSSELL, on behalf of themselves and all others similarly situated,

Plaintiffs

v.

R. L. TURNER, Superintendent of Odom Correctional Institution of the North Carolina Department of Correction,

Defendant

JOHN HARRINGTON, RAY FORBES, et al.,

Plaintiffs

v.

JAMES HOLSHOUSER, Governor, State of North Carolina, et al.,

Defendants

ORDER

LARKINS, District Judge:

In that this Court approved the State's proposed prison library plan by ORDER dated May 29, 1974, with modifications, and

In that the issue of establishing an independent attorneys office was resolved in favor of the State with the determination that such office was not constitutionally required.

It is hereby ORDERED, that the State's proposed prison library plan, attached hereto, be ADOPTED with the following modifications:

1. that two copies of Title 28 U.S.C.A. § 2254 and Title 42 U.S.C.A. §§ 1891-1984 be required for each core library;

2. that no reporter advance sheets or volumes be discarded, in effect giving each library two volumes of each current reporter, and

FURTHER ORDERED, that the State has 120 days from the date of the filing of this ORDER in which to implement the prison library plan, such time to be tolled in the event an appeal is taken from this ORDER, and

FURTHER ORDERED, that the State is to select the locations of the core libraries, subject to the approval of this Court, and

FURTHER ORDERED, that the State file a Certificate of Compliance with this Court upon final implementation of the prison library plan, and

FURTHER ORDERED, that the Clerk shall serve copies of this ORDER upon Mr. Howard E. Manning, Attorney at Law, P. O. Box 1150, Wachovia Bank Bldg., Raleigh, N. C. 27602; and upon Mr. Jacob L. Safron, Assistant Attorney General, State of North Carolina, P. O. Box 629, Raleigh, N. C. 27602; and upon Mr. Donald W. Morgan, 835 West Morgan St., Raleigh, N. C. 27603; and upon Professor Barry Nakell, University of North Carolina, School of Law, Chapel

Hill, N. C. 27514; and upon Mr. Norman B. Smith, Attorney at Law, 704 Southeastern Building, Greensboro, N. C. 27401; and upon the Fourth Circuit Court of Appeals; and upon the Deputy Clerk, Washington Division, P. O. Box 1336, New Bern, N. C. 28560.

Let this ORDER be entered forthwith.

JOHN D. LARKINS, JR.
United States District Judge

Trenton, North Carolina
October 11th, 1974

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

DONALD W. MORGAN, FRANKLIN D. STRADER and JOHN H. RUSSELL, on behalf of themselves and all others similarly situated, Plaintiffs	CIVIL NO. 4277
vs. R. L. TURNER, Superintendent of Odom Correctional Institution of the North Carolina Department of Correction, Defendant	MEMORANDUM OPINION AND ORDER

This cause came to be heard on the motion made by plaintiffs for an order directing that summary judgment be entered in favor of the plaintiffs on the cause of action set forth in Section III, paragraph 9, subparagraph (a) of the plaintiffs' pleading alleging that the defendant R. L. Turner is denying them their First Amendment right to reasonable access to the Courts by not providing the indigent plaintiffs or the class they represent with law libraries, writ rooms, or legal reference materials. It appears to the Court from the pleadings, affidavits, exhibits, memorandum, and other evidence in this cause and from the order of this Court in the case of *Robert (Bobby) Smith, Donald D. Carnes, Richard A. Carter and Bradford Mizell Lilly, on behalf of themselves and all others similarly situated vs. Vernon Lee Bounds, Commissioner, State Department of Correction and Stanley Blackledge, Warden, Central State Prison, Raleigh, North Carolina,* Civil No. 3052, an order based upon identical facts which would be decisive of this issue, that there is no genuine issue of any material fact and, pursuant to Rule 56, Federal Rules of Civil Procedure, that the plaintiffs are entitled to judgment as a matter of law.

THEREFORE, it is hereby ORDERED that summary judgment be entered in favor of the plaintiffs permanently enjoining the defendants from denying plaintiffs a law library or reasonable alternative to a law library.

The order of summary judgment issued in *Robert (Bobby) Smith, et al v. Vernon Lee Bounds, etc. et al,* Civil No. 3052, directed the North Carolina State Department of Correction to file with this Court on or before Sept. 15, 1973 comprehensive proposals designed to provide all prisoners reasonable access to the Courts. If plaintiffs, in this cause, desire oral argument on the adequacy of these proposals, they will properly move for a hearing at that time. Otherwise, the Court will receive written briefs concerning the proposals, and make such further decisions as it deems appropriate.

It is further ORDERED that this cause of action be, and the same hereby is severed, and that this matter proceed with respect to the remaining causes of action alleged in the complaint herein as though this order had not been granted.

JOHN D. LARKINS, JR.
United States District Judge

Dated at:
Trenton, North Carolina
August 15, 1973

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WASHINGTON DIVISION
NO. 790 CIVIL

JOHN HARRINGTON, ALONZO WATTS, CLIFTON SPEIGHT, WILLIAM RYDER, RONNEY MCBRIDE, RAY FORBES,

Plaintiffs

v.

JAMES HOLSHOUSER, Governor, State of North Carolina; V. LEE BOUNDS, Commissioner, N. C. Department of Corrections; DR. STANLEY BLACKLEDGE, Warden, Central Prison; F. R. MOORE, Sergeant, Central Prison; FRANKLIN MAHAN, Regional Superintendent; M. S. LEE, Captain, Washington County Unit 3560 Creswell, North Carolina,

Defendants

MEMORANDUM OPINION and ORDER

LARKINS, District Judge:

This is an action brought pursuant to Title 42 U.S.C. Section 1983. Plaintiffs seek monetary damages and injunctive relief for alleged deprivations of their civil rights. The thrust of the Complaint is that Plaintiffs were denied access to the Courts in that Defendant Moore, returned papers forwarded to him from inmates at the Creswell Unit. The Plaintiffs feel he neglected performance of his duty as a notary public and delayed their legal remedies. Plaintiffs also allege that prison officials have denied the use of proper supplies to inmates wishing to write to the Courts and pray that a writ room be established at Creswell. The Defendants have answered and

moved for summary judgment. Affidavits have been filed with the Court.

Sergeant Moore is in charge of the Writ Room at Central prison. He is also a notary public and verifies all writs processed at Central Prison. In his affidavit he stated that he was legally unable to notarize the petitions in question because the Plaintiffs were not personally present before him when they signed their petitions. He also stated that because of the great volume of petitions filed at Central Prison, the writ room could not type and make copies for inmates not located at Central Prison. In returning the papers to the Plaintiffs, Sgt. Moore wrote them and informed them why they were being returned and suggested the use of carbon paper to make copies. He explained that the writ room cannot handle papers for inmates throughout the state.

The Plaintiffs do not contend that they are being denied notarial services at Creswell. In fact, this Court takes judicial notice that this petition as well as another of Plaintiff Harrington and another of Plaintiff Forbes have been notarized and filed since the return of the papers by Sgt. Moore. It is certainly clear to the Court that the Plaintiffs rights of access to the courts have not been impeded and were not impeded by the procedural steps by Sgt. Moore. Any delay is certainly not of a constitutional magnitude.

The Plaintiffs' claim that they have been denied supplies with which to prepare petitions is also without merit. Mr. Rothenberger, acting superintendent of the Washington County Subsidiary, stated in his affidavit:

> "That at no time have the Plaintiffs been denied the right to prepare writs, petitions, or other papers to petition the courts. Paper and supplies are furnished when requested. At one time, due to the unusual demand for paper, the supply was exhausted, but as soon as delivery was made on the submitted

> requisitions the paper was again given those requesting it."

The Plaintiffs do not allege that supplies are totally withheld, and in fact the Court takes judicial notice that the Plaintiffs have in fact received supplies to prepare petitions. The temporary exhaustion of supplies does not give rise to a constitutional violation of rights under 42 U.S.C. 1983.

The fact the Plaintiffs do not have access to a typewriter is not a claim of constitutional magnitude. The instructions on the forms provided require that the applications be in writing that is legible, either handwritten or typed. The Court does not require that the applications or petitions be typewritten, and equal consideration is given to all inmate requests of the Court. See *Britt v. Henry*, Civil No. 2576 (E.D.N.C. July 2, 1970).

Finally, the Plaintiffs would have this Court require the Department of Correction to provide a writ room at the Creswell Unit. The only institution in the 80 unit complex of the Department of Correction with a writ room is Central Prison. Although the Courts have upheld prison rules regulating the use of writ rooms, no Court has held that prisoners are entitled as a matter of right to a writ room. They are entitled to access to the courts, but not typewriters. See *Williams v. U. S. Department of Justice*, 433 F. 2d 958 (5th Cir. 1970). It is apparent to this Court that the Plaintiffs have not been denied access to the courts. The fact the insitution where they are confined does not have a writ room has not deprived them of access to the courts and is not a violation of their constitutional rights. It would be unduly burdensome on the State to supply writ rooms to all 80 units in the state. As long as the State supplies adequate supplies to the inmates so that they may write the courts, and this the State does, this Court is not going to order that writ rooms be established at any unit.

In the Complaint the Plaintiffs mention three petitions which were returned by Sgt. Moore. The petition by Plaintiff

Harrington has been filed properly with this Court and will be considered after a similar case is decided, see *Harrington v. Holshouser, et al.*, No. 791 Washington Division. The petitions by Plaintiff Speight and Plaintiffs Watts, Ryder, Speight, Davis, and McBride are mere conclusory allegations without any factual basis whatsoever. It is impossible for this Court to consider these at this time. It is suggested that they do as Plaintiff Harrington did and properly prepare their petitions and present them to this Court in the correct form. The unsupported allegations should be supported by facts, affidavits, and any other material the Plaintiffs find pertinent.

NOW THEREFORE, in accordance with the foregoing, it is ORDERED, that the Defendants' motion for summary judgment be, and the same is, hereby ALLOWED, and

FURTHER ORDERED, that this case be, and the same is, hereby DISMISSED, and

FURTHER ORDERED, that the Clerk shall serve copies of this ORDER upon Mr. John Harrington, Mr. Alonzo Watts, Mr. Clifton Speight, Mr. William Ryder, Mr. Ira Davis, Mr. Ronney McBride, Mr. Ray Forbes, as a class, Washington County Unit 3560, Route 2, Box 137, Creswell, N. C.; and upon Mr. Jacob L. Safron, Assistant Attorney General, State of North Carolina, P. O. Box 629, Raleigh, N. C. 27602.

Let this ORDER be entered forthwith.

JOHN D. LARKINS, JR.
United States District Judge

Trenton, North Carolina
May 24, 1973

RECEIVED
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75-915

VERNON LEE BOUNDS, et al.,

Petitioners,

v.

ROBERT (BOBBY) SMITH, et al.,

Respondents.

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BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75-915

VERNON LEE BOUNDS, et al.,

Petitioners,

v.

ROBERT (BOBBY) SMITH, et al.,

Respondents.

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Respondents pray that a writ of certiorari not issue to review the judgment of the United States Court of Appeals entered on September 30, 1975.

REASONS FOR DENYING THE WRIT

A. THE COURT OF APPEALS RESTED ITS DECISION IN THIS CASE ON WELL ESTABLISHED AUTHORITY IN THIS COURT.

In holding that the State was denying respondents reasonable access to the courts and equal protection of the laws by failing to provide them access in some form to legal research facilities, the Court of Appeals properly relied on this Court's decision in Younger v. Gilmore, 404 U.S. 15 (1971), aff'g. Gilmore v. Lynch, 319 F.Supp. 105 (N.D. Cal. 1970). The authority of Younger v. Gilmore for this proposition is not affected by the fact that it was decided as a summary affirmance of the decision of a three-judge court. "Votes to affirm summarily . . . are votes on the merits of a case.'" Hicks v. Miranda, 422 U.S. 332, 344 (1975); Ohio ex rel. Eaton v. Price, 360 U.S. 246, 247 (1959). This Court has recently reaffirmed the validity of Younger v. Gilmore, citing it with approval and relying on it. In Wolff v. McDonnell, 418 U.S. 539 (1974), Justice White, writing for a unanimous Court on this point, reviewed Gilmore as follows:

> "Following Avery, the Court in Younger v. Gilmore, supra, affirmed a three-judge court judgment which required state officials to provide indigent inmates with access to a reasonably adequate law library for preparation of legal actions." Id. at 578-579.

See also Procunier v. Martinez, 416 U.S. 396, 419 (1974); Cruz v. Hauck, 404 U.S. 59 (1971); Smith v. Bennett, 365 U.S. 708 (1961).

The proposition settled by Gilmore has achieved a status of widely accepted doctrine. The decision of the Court of Appeals in this case is consistent with the decisions of all the other circuits that have passed on the question. Kirby v. Ciccone, 491 F.2d 1310, 1312 (1974); Noorlander v. Ciccone, 489 F.2d 642, 650-651 (8th Cir. 1974); Cruz v. Hauck, 475 F.2d 475, 477 (5th Cir. 1973); Novak v. Beto, 453 F.2d 661 (5th Cir. 1971); Sostre v. McGinnis, 442 F.2d 178, 201 (2d Cir. 1971); Johnson v. Anderson, 370 F. Supp. 1373, 1383-1385 (D. Del. 1974); Hooks v. Wainwright, 352 F. Supp. 163 (M.D. Fla. 1972). See also, Cruz v. Hauck, 515 F.2d 322 (5th Cir. 1975); Russell v. Oliver, 392 F. Supp. 470, 473 (W.D. Va. 1975). Not only is there thus no conflict in the circuits, there is not even a single federal judge who has taken a different position; there were no dissenting opinions on this issue in any of those cases.

Against this compelling authority, petitioners cite only Ross v. Moffitt, 417 U.S. 600 (1974). In Ross, this Court decided only that a state is not constitutionally required to furnish counsel to an indigent defendant beyond the first stage of appellate review. As the District Court held in this case, Supp. App. 23-24, that means that North Carolina is not required to provide an independent office of attorneys to counsel prisoners, but does not offset the requirement that the State provide the prisoners access in some form to legal research facilities. In Ross, this Court reaffirmed the duty of the State "to assure the indigent defendant an adequate opportunity to present his claims fairly in the context of the State's appellate process." Id. at 616. In deciding that that duty does not necessarily encompass free counsel at discretionary appeal stages, this Court was strongly influenced by the consideration that the defendant at such a stage already has the benefit of the work product of his appointed attorney upon his first appeal. Id. at 615. By contrast, the needs of the indigent prisoner supporting his claim for access to legal materials -- although including the usefulness of such materials to him at all stages of his appeal from his conviction -- include also original actions for habeas corpus or civil rights actions. Wolff v. McDonnell, 418 U.S. 539, 579-580 (1974). The fact that this Court only days after deciding Ross unanimously reaffirmed Gilmore in Wolff v. McDonnell demonstrates that Ross does not detract from the continuing validity of Gilmore. Indeed, by recognizing that North Carolina need not provide counsel to indigent prisoners beyond the first appeal, Ross emphasized the importance of legal materials to such uncounseled inmates.

As the District Court found, the record in this case establishes that North Carolina provides its prisoners with neither access to an adequate law library (in fact, they provide none at all except an inadequate one at one prison), nor an adequate alternative (in fact, they provide none at all). Supp. App. 6, 11. The petition for a writ of certiorari, at pages 9-12, makes a slight effort to suggest that North Carolina does provide an adequate alternative to law libraries for its inmates. None of the information cited in those pages is supported by the record in this case. Despite full opportunity to do so, petitioners never attempted to present any of this alleged information to the District Court, not even by affidavit. Much of that information is incorrect; much of it amounts to only the conclusions of counsel; and there is no basis for any of it in the record of this case. Petition 19. See Vette v. Virginia Department of Corrections, - F.2d - (4th Cir. February 27, 1976) (copy attached as Exhibit A to this brief); Cruz v. Hauck, 515 F.2d 322, 332 (5th Cir. 1975).

B. THE COURT OF APPEALS DECISION IN JARVIS V. NORTH CAROLINA COLLATERALLY ESTOPS PETITIONERS FROM CONTENDING THAT IT IS NOT CONSTITUTIONALLY REQUIRED TO PROVIDE ITS PRISONERS ACCESS IN SOME FORM TO LEGAL RESEARCH FACILITIES.

In Jarvis v. North Carolina, Mem. Dec., Docket No. 73-2094 (4th Cir. March 27, 1974), a case in which some of the defendants were the same as some of those in this case, the Fourth Circuit held: "Jarvis' claims that he has been absolutely denied law books, if accurate, states a claim for relief if the prison system offers no adequate alternative." Id. at 5. A copy of that decision is attached as exhibit B to this brief.

Since the State did not seek review of that decision, it is final and binding on the State. By operation of collateral estoppel, the State is foreclosed from relitigating that issue. Humphreys v. Tann, 487 F.2d 666, 671 (6th Cir. 1973); Federal Savings & Loan Insurance Corp. v. Hogan, 476 F.2d 1182,

1187 (7th Cir. 1973); Seguros Tepeyac, S.A. v. Jernigan, 410 F. 2d 718, 726-727 (5th Cir. 1969); Zdanok v. Glidden Co., 372 F. 2d 944, 953-955 (2d Cir.) cert. den. 377 U.S. 934 (1964); Bruszewski v. United States, 181 F. 2d 419, 421-422 (3d Cir.) cert. den. 340 U.S. 865 (1950). Thus, the State may not dispute the effect of Gilmore on this case. The District Court found that respondents have been absolutely denied law books and that the prison system offers no adequate alternatives. Supp. App. 6, 11. Thus, Jarvis is conclusive upon the issue in this case.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 75-1315

Charles R. Vette, et al.
All persons incarcerated in the
Virginia Correctional Field Units
as a Class Action,

Appellants,

v.

Virginia Department of Corrections,

Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Albert V. Bryan, Jr., District Judge.

Submitted: January 22, 1976. Decided: Feb. 27, 1976

Before BUTZNER, RUSSELL and FIELD, Circuit Judges.

(Charles R. Vette, Appellant Pro Se; James W. Hopper, Assistant Attorney General, for Appellee.)

EXHIBIT A

PER CURIAM:

Charles R. Vette has appealed from the dismissal of a suit he initiated pursuant to 42 U.S.C. § 1983 alleging that his access to the courts has been unduly restricted by the failure of the Virginia penal system to provide inmates with legal research materials. After the district court's dismissal of Vette's action without a hearing, this court issued its opinion in Smith v. Bounds, No. 74-2378 (4th Cir. September 30, 1975), pet. for cert. filed December 29, 1975, in which we held that the state must accord a prisoner either "adequate legal research facilities" or "an acceptable legal assistance program." In their return, the respondents asserted they had "an acceptable legal assistance program." The order of the district court does not indicate that any finding to this effect was made or even that any evidence along this line was offered. The proceeding must accordingly be remanded for appropriate findings on this claim of the respondents. Of course, if the respondents do not make out this defense, then they must offer to provide the petitioner "adequate legal research facilities." What such "adequate legal research facilities" may be will depend to some extent on the particular manner in which the state operates its prison system.

Vette brought his action as a class action. According to Oxendine v. Williams, 509 F.2d 1405 (4th Cir. 1975), a class

action may not be certified when a pro se litigant attempts to represent all other similarly situated prisoners. Thus, on remand the district court must consider the ability of Vette to bring the action in his own behalf and not as a class action.

Accordingly, we dispense with oral argument and remand to the district court for further proceedings in compliance with this opinion.

FILED

MAR 27 1974

WILLIAM K. SLATE, II
CLERK

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 73-2094

Robert C. Jarvis,

Appellant,

v.

State of North Carolina and
Captain R. T. Joines, Defendants,
and V. Lee Bounds, Commissioner of
the N. C. Department of Correction;
North Carolina Department of Correction;
Additional Party Defendants,

Appellees.

Appeal from the United States District Court for the Western District of North Carolina, at Asheville. Woodrow Jones, Chief Judge.

Submitted: February 25, 1974 Decided: MAR 27 1974

MEMORANDUM DECISION

Robert C. Jarvis, a state prisoner, filed a petition treated by the district court as a complaint pursuant to the Civil Rights Act, 42 U.S.C. § 1983. The petition and subsequent documents filed by Jarvis alleged that his constitutional rights had been violated in the following respects: (1) he had been punished for his writ-writing activities; (2) prison administrators intentionally interfered with his free access to the federal courts; (3) he had received inadequate dental treatment; (4) he had received inadequate medical care; and (5) he was confined in a facility so unsanitary

and unhealthy as to result in cruel and unusual punishment. The defendants filed affidavits and prison records to refute Jarvis' allegations, and prayed for summary judgment. The district court examined the documents filed by all parties, concluded that there was no genuine dispute as to any material fact, and granted the defendants' motion for summary judgment. Jarvis appeals. For reasons hereinafter set forth, we affirm in part, reverse in part, and remand for further proceedings.

Jarvis' first complaint is that he has been punished because of his writ-writing activities. He specifically complains that he had been transferred to five different prison facilities in approximately four months as punishment for bringing an earlier civil rights suit. The record reflects the following undisputed facts: Jarvis was convicted of the offenses for which he is currently confined in May 1972. On June 7, 1972, the United States District Court received from Jarvis a civil rights complaint directed against the Sheriff, Deputy Sheriff, and Sheriff's Department of Iredell County, North Carolina. On June 20, 1972, Jarvis appeared before the Central Classification Committee of Central Prison. The Committee recommended Jarvis' assignment to the Yancey County Subsidiary. On June 27, 1972, Jarvis was transferred to the McDowell County Subsidiary. (The record does not show whether Jarvis ever was, in fact, in custody at the Yancey unit.) On August 25, 1972, Jarvis was transferred to the Alexander County Subsidiary. Merely six days later, he was sent to the Western Correctional Center at Morgantown. On either October 25 or 26, 1972, Jarvis was transferred to the Caldwell County Facility at Hudson, N. C. The present complaint was initially filed on November 29, 1972. It further appears that since the commencement of this litigation, Jarvis has been transferred to the Watauga County

Subsidiary, though the date of this transfer does not appear in the record.

Jarvis alleges that he was continually moved about because he was known as a writ-writer. While the place of confinement of a prisoner and the transfer of an inmate from one prison facility to another are ordinarily matters within the discretion of penal authorities, we think it cannot be disputed that transfers may not be constitutionally employed as a weapon to punish or discourage the right of free access to the courts. See Coleman v. Peyton, 362 F.2d 905, 907 (4th Cir. 1966). Accordingly, if Jarvis' claim is true, he is entitled to some meaningful relief.

In support of his contention, Jarvis recounts in an affidavit the following conversation with Captain T. R. Joines, Superintendent of the Caldwell County Subsidiary: "After I arrived at the Hudson Camp I was summoned for an interview with Captain Joines. I did not request the interview. At this time Captain Joines told me the reason no camp wanted me was because I was a writ writer and that no superintendent wanted a writer of writs in his camp. He told me this was why no camp wanted to keep me." Jarvis' account of the conversation is more than supported by Joines' own sworn version of what transpired: "That he told plaintiff that plaintiff was known as a writ writer and that no superintendent wanted one of those. That plaintiff admitted writing a few but had no reason to write one here. That he told plaintiff that he had been working in the Department for twenty-two years, that he knew right from wrong, and that he was not going to give the plaintiff grounds to write one. That if plaintiff did write a writ against him, he would probably be requesting that plaintiff be moved to another subsidiary or unit." (Emphasis added.)

In additional materials filed by defendants, Jarvis'

several transfers are said to have been caused by a change in his status from medium to honor grade, his inability to work on a road crew at one unit, his age, and the Department's desire to fulfill his request that he be transferred to a unit closer to his home. The district court apparently accepted as true these benign explanations for Jarvis' transfers, finding it difficult to see how his suit against the County Sheriff could so upset the Department of Corrections that they would transfer him from unit to unit in retaliation. While the district court may well be correct that the Department did not transfer Jarvis out of improper motivation, and that Joines' statement was simply improvident, we conclude that summary judgment was inappropriate. Viewing the evidence most favorably toward Jarvis, we cannot conclude that "it is quite clear what the truth is." Sartor v. Arkansas Gas Corp., 321 U.S. 620, 627 (1944). The complaint raises a genuine issue of material fact -- the reason for Jarvis' transfers -- which was improperly resolved by a dismissal on the pleadings. Adickes v. S. H. Kress & Co., 398 U.S. 144 (1970). An evidentiary hearing, with the traditional safeguard of adversary cross-examination, is necessary under the facts present here to resolve the controversy.

Jarvis' second claim is that prison administrators interfered with his access to the federal courts. He claims that at the Caldwell unit, law books are not permitted and inmates are not permitted to assist one another in legal matters. He also alleges that Joines warned him that "you better not write any writs on me and you better not write writs for anyone else in this camp, or give any advice to these inmates."

There is no doubt that Jarvis' contentions state a violation of constitutional rights which may be challenged by a suit pursuant to 42 U.S.C. § 1983. As the Supreme Court has stated,

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"it is fundamental that access of prisoners to the courts for the purpose of presenting their complaints may not be denied or obstructed." Johnson v. Avery, 393 U.S. 483, 485 (1969). In that case, the Court struck down a Tennessee prison regulation which prohibited inmates from assisting and advising each other concerning writs of habeas corpus and other legal matters, in the absence of alternatives designed to furnish legal assistance to indigent prisoners. Similarly, Jarvis' claims that he has been absolutely denied law books, if accurate, states a claim for relief if the prison system offers no adequate alternative. Gilmore v. Lynch, 319 F.Supp. 105 (N.D.Cal. 1970), aff'd sub nom. Younger v. Gilmore, 404 U.S. 15 (1971).

The district court granted summary judgment on the ground that Jarvis' own evidence and the record itself refute his contention that his access to the courts has been impaired. However, as counsel for Jarvis has observed, unconstitutional conduct designed to chill inmates' exercise of their right of access to the courts cannot be disregarded simply because the intimidation has failed. It should be obvious that if the filing of a suit is taken as proof that there has been no interference with a prisoner's right of access to the courts, the claim could of necessity never be established. Since material questions concerning the nature and extent of the defendants' interference with Jarvis' right of access to the courts have not been resolved, we conclude that summary judgment was inappropriate.

Jarvis' third complaint is that he has received inadequate dental treatment. While the record reveals that Jarvis is in need of dental care, the evidence fails to establish that defendants are or may be responsible for his lack of treatment. While Jarvis

claims that he was refused dental care at the Central Prison in June 1972 and that his appointments with private dentists were forced to be canceled because of his transfers, uncontradicted evidence submitted by defendants demonstrates that Jarvis received no prison treatment because he preferred private care. The Infirmary Administrator of the Central Prison Hospital submitted an affidavit stating that Jarvis refused an appointment and expressed a desire for private treatment. An appoincment with a private dentist was then made, at state expense, where X-rays were made and an estimate of the cost of the work prepared. An arrangement was then made that Jarvis would have the work done when he had accumulated sufficient funds in his prison trust account to cover the cost of treatment. The defendants' contention is that the work was not done because Jarvis never deposited sufficient funds in his account to assure the dentist of payment.

Jarvis has not disputed this version of events. While it may be that his transfers necessitated cancellations of one or two appointments, his difficulty getting dental care does not amount to a constitutional deprivation. Accordingly, the district court's grant of summary judgment on this issue is affirmed.

The fourth claim is that Jarvis received inadequate medical care. This claim arises from an incident where Jarvis experienced a two-day delay before he saw a doctor after he first requested one. During the interim period, he was kept in the sick room. Cough syrup and aspirin were administered by guards. We conclude that summary judgment against Jarvis was proper. While such a delay in medical treatment may violate constitutional rights under appropriate circumstances, Ritchie v. Chappell, 468 F.2d 1072 (6th Cir. 1972), Jarvis alleges no facts to support a conclusion

that the delay in this instance was deliberate or arbitrary, or that it amounted to cruel or unusual punishment.

Jarvis' final complaint is that he is being confined in conditions so unsanitary and unhealthy as to constitute cruel and unusual punishment. He recites a variety of evils, including that his prison dormitory is overcrowded and the beds only fifteen inches apart; that toilet facilities are inadequate and not in proper working order, subjecting inmates to a disgusting stench; that bedding is filthy and ragged; that food handlers are not required to keep clean and follow sanitary practices; that he is allowed only one change of clothes per week, even though the clothes become muddy and dirty while working; that inmates are compelled to work in the cold, rain and mud without boots or adequate winter coats; and that indigent inmates are denied toothbrushes, toothpaste and razors. Affidavits of prison officials deny some of these conditions, raising factual issues on Jarvis' allegations.

To allow relief under 42 U.S.C. § 1983, prison conditions must be so deficient as to infringe constitutional rights. Nevertheless, allegations of conditions potentially injurious to health not fundamentally different from the claims made by Jarvis have been considered by other courts to necessitate positive judicial inquiry. See, e.g., Jones v. Wittenberg, 323 F.Supp. 93 (N.D. Ohio 1971); Lake v. Lee, 329 F.Supp. 196 (S.D.Ala. 1971). We conclude, therefore, that Jarvis' claim should not have been summarily dismissed. The district court is directed to make findings of fact concerning the nature of the conditions of which Jarvis complains, and to make conclusions of law concerning their permissibility under the Eighth Amendment.

Accordingly, the judgment and order of the district court is affirmed in part, reversed in part, and remanded for further

proceedings not inconsistent with this opinion.

United States Circuit Judge

United States Circuit Judge

United States Circuit Judge

CERTIFICATE OF SERVICE

I, Barry Nakell, one of the attorneys for respondents and a member of the Bar of the Supreme Court of the United States, do hereby certify that I served one copy of the attached Brief in Opposition to the Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit on counsel for petitioners, Mr. Jacob L. Safron, Special Deputy Attorney General, Justice Building, Raleigh, North Carolina 27602, by depositing the same on this date with the United States Postal Service, Chapel Hill, North Carolina, first class postage prepaid, addressed as aforesaid.

I certify that to the best of my knowledge and belief all parties required to be served have been served.

Date: March 15, 1976

/Barry Nakell

Barry Nakell
Attorney for Respondents

Supreme Court, U. S.
FILED
JUN 19 1976
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

October Term, 1975

No. 75-915

VERNON LEE BOUNDS, etc., et al.,
Petitioners

v.

ROBERT (BOBBY) SMITH, et al.,
Respondents

R. L. TURNER, etc.,
Petitioner

v.

DONALD W. MORGAN, et al.,
Respondents

JAMES HOLSHOUSER, etc., et al.,
Petitioners

v.

JOHN HARRINGTON, et al.,
Respondents

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF FOR PETITIONERS

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ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
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BRIEF FOR PETITIONERS

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit filed September 30, 1975 is not yet reported and is printed as the Appendix to the Petition for Writ of Certiorari docketed on December 29, 1975. (P pp 14-21).

The Opinions and Orders of the United States District Court for the Eastern District of North Carolina, Raleigh and Washington Divisions, are unreported, and are printed as the Supplemental Appendix to the Petition for Writ of Certiorari.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The Petition for Writ of Certiorari was granted April 5, 1976.

QUESTION PRESENTED

WHETHER THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION REQUIRE THE NORTH CAROLINA DEPARTMENT OF CORRECTION TO PROVIDE INMATES WITH LEGAL RESEARCH FACILITIES.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the First and Fourteenth Amendments to the Constitution of the United States.

STATEMENT OF THE CASE

These three consolidated cases arose out of like claims asserted by various inmates in the custody of the North Carolina Department of Correction to the effect that, by failing to provide them with legal library facilities, the State of North Carolina was denying them reasonable access to the courts and equal protection of the laws as guaranteed by the First and Fourteenth Amendments. No regulation of the Department of Correction, nor any affirmative action taken by the Petitioners was claimed to have interfered with the prisoners' access to the courts. Rather, it was the failure of the State to adequately provide resources and assistance to prisoners that was challenged as unconstitutional. In its Answer, the Petitioners attempted to demonstrate that the State had

provided considerable legal assistance to indigents,[1] that the North Carolina Department of Correction has no regulations prohibiting mutual legal assistance, and that the State of North Carolina has extensive post conviction procedures, but upon the Respondents' Motion for Summary Judgment, the Court focused on the resources available to prisoners at the initial stage of litigation, i.e., the preparation of writs and petitions.[2] The District Court granted Summary Judgment and required the State of North Carolina to submit a proposed plan to provide adequate legal library facilities for indigent prisoners seeking to file pro se habeas corpus or civil rights actions. (Supp A pp 9-13, 29-30) The State, obedient to the Order filed a plan for legal research facilities. (Supp A pp 14-20) The plan was designed to establish 7 core libraries distributed throughout the State in a manner best suited to serve the 77 units situated in 67 different counties of North Carolina which constitute the North Carolina Department of Correction. Each core library would contain the following material:

North Carolina General Statutes
North Carolina Reports (1960-)
North Carolina Court of Appeals Reports
Strong: North Carolina Index
North Carolina Rules of Court (West)

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[1]North Carolina spent $1,962,719.59 for the appointment of counsel in 11,278 cases in the fiscal year 1971-72. The cost rose in 1972-73 when $2,454,018.00 was appropriated and $2,624,378.41 was actually spent for the appointment of counsel in 16,304 cases, an increase of 44.6% over fiscal year 1971-72. The 1973 Session of the North Carolina General Assembly appropriated $3,230,000.00 for the 1973-74 fiscal year and $3,307,340.00 was actually spent in 29,117 cases, an increase of 78.5% over fiscal year 1972-73. For the fiscal year 1974-75, the General Assembly appropriated $3,750,597.00 and $4,281,625.00 was actually spent in 32,423 cases. For the current fiscal year, 1975-76, the General Assembly has appropriated $5,596,769.00. [Annual Report of the Administrative Office of the Courts for the State of North Carolina]

[2]"In the answer filed by the defendants, great length was given to illustrate each situation in which the State presently provides counsel for indigent prisoners. Despite these efforts, however, there is no indication of any assistance at the initial stage of preparation of writs and petitions which is under consideration in this action. . . ." SMITH v. BOUNDS, mem. dec. (E.D. N.C., August 16, 1973) (Supp A at 11).

United States Code Annotated (West)
Title 18
Title 28 §§ 2241-2254
Title 28—Rules of Appellate Procedure
Title 28—Rules of Civil Procedure
Title 42 §§ 1891-2010
Supreme Court Reporter (West) (1960-)
Federal Reporter 2d (West) (1960-)
Federal Supplement (West) (1960-)
Black's Law Dictionary (West)
Sokol: Federal Habeas Corpus (Michie)
LaFave and Scott: Criminal Law Hornbook (West) (2 copies)
Cohen: Legal Research
Criminal Law Reporter (Bureau of National Affairs)
Palmer: Constitutional Rights of Prisoners

Selection of core libraries would be based upon the number of petitions filed and geographic location. Each unit would be provided with request forms for inmates to set up appointments to work in the nearest library. In most cases a full day's use would be alloted. Transportation and housing would be provided.

In addition, two smaller core libraries containing the North Carolina Statutes and treatises would be established for prisoners on indefinite non-punitive segregation at Central Prison and for the Correctional Center for Women. Inmates in these categories would request volumes from the larger libraries.

At this point the Inmates objected to the omission from the plan of independent legal counsel for the prisoners as a supplement to the library facilities proposed under the plan. The Court ordered counsel for all parties to submit briefs on the issue of whether an independent attorney's office, supplementary to the library facilities was necessary. (Supp A p 19) After consideration, the Court refused to require the State to establish an independent attorney's office (Supp A pp 21-25) and approved, with modification, the library facility plan submitted by the State obedient to the Order of the Court. (Supp

A pp 26-28) The court's modifications provided:

1. that two copies of Title 28 U.S.C.A. § 2254 and Title 42 U.S.C.A. § 1891-1984 be required for each core library; and
2. that no reporter advance sheets or volumes be discarded, in effect giving each library two volumes of each current reporter.

Both the State and the inmates appealed. The State from the order for Summary Judgment contending that it is without obligation to provide prisoners with legal research facilities or an alternative therefore, and the inmates from the Order approving, with modification, the proposed plan, because they urged such plan was inadequate. The Court of Appeals for the Fourth Circuit modified the Order so as to require a core library at the Correctional Center for Women, but otherwise affirmed. (P pp 14-21).

SUMMARY OF ARGUMENT

THE NORTH CAROLINA DEPARTMENT OF CORRECTION IS NOT CONSTITUTIONALLY OBLIGATED TO PROVIDE INMATES WITH LEGAL RESEARCH FACILITIES.

I. PETITIONERS HAVE NOT INTERFERED WITH THE RESPONDENTS' ACCESS TO THE COURTS.

In JOHNSON v. AVERY, 393 U.S. 483 (1969), this Court noted a virtual absence of other forms of assistance which might justify a ban on mutual legal assistance among inmates and went on to examine other methods of assistance "available to provide *alternatives* if the State elects to prohibit mutual assistance among inmates." 393 U.S. at 490. Implicit in this consideration of "alternatives" is the proposition that by simply not preventing prisoners from assisting each other in writ writing a State had done what it is constitutionally required to

do in the way of not preventing access to the Courts. Furthermore, non-interference was the standard utilized by this Court in WOLFF v. McDONNELL, 418 U.S. 539 (1974) upon remand "to assess the adequacy of legal assistance where one inmate had been appointed as the only prison writ writer under the reasonable alternative test of AVERY." 418 U.S. at 580.

Because the State of North Carolina has generously funded its program of appointing counsel for indigents; has extensive post conviction procedures which also provide for the appointment of counsel for indigent defendants; does not ban mutual inmate assistance, i.e., "writ writers", of whom the Respondents are among the most prolific; and, as demonstrated in the Appendix, have not, as readily conceded by the District Court, interferred with the Respondents' access to the courts, this State should not be required to establish expensive law libraries for the 77 units which comprise the Division of Prisons of the North Carolina Department of Correction.

II. THE FAILURE OF NORTH CAROLINA TO PROVIDE EXTENSIVE LEGAL LIBRARY FACILITIES TO INDIGENT PRISONERS IS NOT A DENIAL OF EQUAL PROTECTION.

In ROSS v. MOFFIT, 417 U.S. 600 (1974), this Court considered the constitutional necessity for the appointment of counsel to seek discretionary review. Although set in a different context, the rationale of MOFFIT is equally applicable to the question of whether or not a state is required by the Constitution to furnish law libraries to prisoners. Thus, if a state is not constitutionally required to provide for appellate review nor appoint counsel for discretionary review, and is not required to equalize economic conditions or provide elective benefits, it is also not required by the Constitution to furnish law libraries to prisoners.

ARGUMENT

THE NORTH CAROLINA DEPARTMENT OF CORRECTION[3] IS NOT CONSTITUTIONALLY OBLIGATED TO PROVIDE INMATES WITH LEGAL RESEARCH FACILITIES.

I

PETITIONERS HAVE NOT INTERFERRED WITH RESPONDENTS' ACCESS TO THE COURTS.

> "The Defendants in the present suit point out to the Court that the Plaintiffs in the present suit have filed a great many petitions and suits in this Court and in other Courts since their incarceration in the North Carolina Department of Correction.[4] This Court fully agrees that this is so, and that if volume is to be the test, these Plaintiffs are among the most prolific writ writers in the system. But this Court feels that it is not volume alone which should be used to test whether or not a prisoner is being deprived of his access to the Courts. . . ." SMITH v. BOUNDS, mem. dec., No. 3052 (E.D. N.C., Aug. 11, 1972) (Supp A p 5)

---

[3]The Division of Prisons of the North Carolina Department of Correction currently has custody of approximately 13,000 prisoners. These prisoners are housed in 77 prison units situated in 67 counties. Fifteen of these units house less than 100 prisoners, fifty from 100 to 200 prisoners, and ten house over 200 prisoners. The reason for this diffusion of facilities and wide distribution of the prison population is the desire of the state to facilitate work release and other rehabilitative programs and, whenever feasible, to keep the prisoners near their families and within their home counties hopefully to aid in their subsequent successful reentry into society.

[4]For a review of the "great many petitions and suits," see Appendix hereto entitled *Respondents' Histories in the Courts*, infra, pp. 25-35.

Petitioners have not deprived the Respondents of their access to the Courts,[5] nor have they merely ignored these rights. Instead, after spending millions of dollars a year to provide professional assistance to indigents,[6] Petitioners are accused of not providing sufficient assistance.

The leading cases dealing with prisoners' rights to access to the courts have all dealt with situations in which the government, by affirmative action, has interfered with prisoners' attempts to go to court. In EX PARTE HULL, 312 U.S. 546 (1941), an inmate in a Michigan State prison attempted to petition this Court for a Writ of Habeas Corpus on the ground that he had been denied due process of law in a conviction which occurred during a probationary period following an earlier conviction, thus triggering a reinstatement of the earlier sentence. The prison forwarded the petition to a legal assistant of the parole board who returned it to the prisoner explaining that it was inadequate in that it lacked a supporting brief, verification, affidavits and other formalities. A copy which the inmate attempted to give to his father for transmittal to this Court was seized. When his father finally got a petition through, this Court struck down the regulation requiring parole board approval, holding that it was an unconstitutional restriction on the petitioner's right to apply to a federal court for a writ of habeas corpus. It is significant for this case that this Court then evaluated the merits of the petition to determine whether it required a response from the State. On the basis of the "exhibits and rather vague statements in the petition", 312 U.S. at 50, apparently prepared by Hull with no assistance or resources other than the criticism provided by the legal assistant to the parole board, this Court held that the second trial was not adequately challenged. Surely this amounts to at least a tacit recognition that, while the States are forbidden from standing in the way of a prisoner's attempt to initiate proceedings in the courts, the States' constitutional obligation to assist prisoners in their attempts in an affirmative manner is minimal at most.

[5]See fn. 4, supra.
[6]See fn. 1, supra.

In JOHNSON v. AVERY, 393 U.S. 483 (1969), a prisoner of the State of Tennessee challenged the constitutionality of a prison regulation forbidding inmates from advising or assisting other inmates in the preparation of writs or other legal matters. Emphasizing the fundamental importance of the writ of habeas corpus, this Court noted that, if assistance from "jailhouse lawyers" were denied to illiterate and indigent inmates, the effect would be that these inmates would have no access to courts to challenge the fact of their confinement. This Court noted a virtual absence of other forms of assistance which might justify the ban of mutual assistance among inmates. It is significant for this case to note that this Court went on to examine other methods of assistance, e.g., use of law students or expanded public defender programs, "available to provide *alternatives* if the State elects to prohibit mutual assistance among inmates." 393 U.S. at 490 (Emphasis added.) Implicit in this consideration of "alternatives" is the proposition that by simply not preventing prisoners from assisting each other in writ writing, a State has done what it is constitutionally required to do in the way of not preventing access to the courts.[7] Non-interference was, moreover, used by this Court in the case of WOLFF v. McDONNELL, 418 U.S. 539, 577-80 (1974), as the applicable standard. It is also significant that, in addition to the millions of dollars worth of legal assistance provided each year by the State of North Carolina to indigent criminal defendants and inmates involved in state court post conviction and habeas corpus proceedings, the North Carolina Department of Correction imposes no restrictions on inmate mutual legal assistance, i.e., "writ writers." In fact, as readily noted by the District Court, the representatives of the respondent class are several of the more prolific of North Carolina's inmate writ writers. Thus, under the necessary implication of HULL, AVERY, and WOLFF, the District Court erred in granting Summary Judgment against Petitioners in this action since the State of North Carolina has no constitutional obligation to provide law libraries to its inmates.

[7]This was recognized by Mr. Justice White in his dissenting opinion, 393 U.S. 499.

The case most directly on point for Respondents is GILMORE v. LYNCH, 319 F. Supp. 105 (N. D. Cal. 1970) (Three-Judge Court), *aff'd sub nom.* YOUNGER v. GILMORE, 404 U.S. 15 (1971). In GILMORE, California state prison inmates challenged the constitutionality of regulations limiting the legal materials available in prison libraries to Federal and State constitutions, State Penal, Welfare and Institutions, Health and Safety and Vehicle Codes; a law dictionary; a Criminal Procedure Hornbook; the California Weekly Digest; and the rules of the various courts. In addition, all additional materials had been ordered removed and destroyed. A Three-Judge Court struck down the regulations as unconstitutional and the State appealed directly to this Court. This Court decided GILMORE in a per curiam decision, the entire text of which reads as follows:

> On appeal we postponed the question of jurisdiction pending the hearing of the case on the merits. 401 U.S. 906 (1971).
>
> Having heard the case on its merits, we find this Court does have jurisdiction (ALABAMA TEACHERS v. ALABAMA PUBLIC SCHOOL AND COLLEGE AUTHORITY, 393 U.S. 400, 21 L. Ed. 2d 631, 89 S. Ct. 681 (1969)) and affirm the judgment of the District Court for the Northern District of California. JOHNSON v. AVERY, 393 U.S. 483, 21 L. Ed. 2d 718, 89 S. Ct. 747 (1969).

The ALABAMA TEACHERS case cited by this Court was relevant only to the question of jurisdiction. Therefore, the citation to AVERY constitutes the entire published reasoning of this Court on the question of the State's duty to provide adequate legal library facilities. And yet, as already demonstrated, implicit in the AVERY decision is the rule that, to fulfill its constitutional obligation not to abridge a prisoner's right to petition the government for redress of grievances, a state need only refrain from interfering with prison mutual assistance in writ writing. In WOLFF v. McDONNELL, supra,

after citing GILMORE, 418 U.S. at 578-79, this Court remanded "to assess the adequacy of legal assistance where one inmate had been appointed as the only prison writ writer under the reasonable alternative test of AVERY." 418 U.S. at 580. This seeming inconsistancy suggests that the per curiam decision in GILMORE is something less than a clear precedent to be accorded the full weight of *stare decisis.*

The very uncertainty of the law, both in terms of the specific duties imposed upon the States and in terms of the scope and theoretical justification of federal review of state prison administrative action, strongly argues in favor of a fresh evaluation of the issue and as a part of that evaluation, the reasoning of the District Court in GILMORE should be considered in determining whether the rule in that case should be applied to every prison in the nation or overruled as a mistake.

The District Court attempted to formulate a "basic test" or standard by which federal courts should judge the actions, omissions, rules and regulations of state prison officials. It came up with the following: "The asserted interest of the State in enforcing its rule is balanced against the claimed right of the prisoner and the degree to which it has been infringed by the challenged rule." 319 F. Supp. at 109. The District Court then noted the prisoners' right of access to the Courts, citing EX PARTE HULL, supra, and of equal protection of the law, citing GIDEON v. WAINWRIGHT, 372 U.S. 335 (1963) (indigent's right to have counsel appointed at trial); DOUGLAS v. CALIFORNIA, 372 U.S. 353 (1963) (indigent's right to have counsel appointed on direct appeal if state provides appellate review); GRIFFIN v. ILLINOIS, 351 U.S. 12 (1956) (indigents' right to have transcript provided free on appeal). Against these rights the District Court balanced the State's interests in economy and standardization. It held that the State's interests did not justify the infringement of the State's policy made on the prisoners' rights. The State was therefore required to provide reasonably adequate legal research facilities. Accord, GAGLIE v. ULIBARRI, 507 F. 2d 721 (9th Cir. 1974); HOOKS v. WAINWRIGHT, 457 F. 2d 502 (5th Cir. 1972); NOORLANDER v. CICCONE, 489 F. 2d 642 (8th Cir. 1973)

(only if no alternative is shown is an adequate library required). But Cf. HATFIELD v. BAILLEAUX, 290 F. 2d 632 (9th Cir. 1961); PAGE v. SHARPE, 487 F. 2d 567 (1st Cir. 1973) (county sheriff has no duty to provide books although it would be a different case if access to courts had been denied); FARRINGTON v. NORTH CAROLINA, 391 F. Supp. 714 (M.D. N.C. 1975) (no constitutional need to establish law libraries for prisoners).

The problems with this extension of equal protection theory are discussed under Section II of this Brief. The problems with access to Court theory have already been established, but may be briefly summarized. The Court's opinions in the access cases, while forbidding interference by the States with the right of prisoners to petition the courts, do not require the states affirmatively to provide assistance. Besides, the clear implication of AVERY, supra, as applied in WOLFF, supra, is that a state executes its constitutional duty, such as it is, to assist prisoners merely by not interfering with inmates assisting each other.

This doctrine accords with common sense. There is no constitutional requirement that a state provide legal assistance to indigent citizens who have not run afoul of the law. If an indigent is accused of a crime, the State is required to furnish counsel through many stages of the proceedings. North Carolina meets these constitutional requirements and goes even further by providing counsel in situations where it is not constitutionally required.[8] There is no constitutional requirement that a state

[8] §7A-451. *Scope of entitlement.*—(a) An indigent person is entitled to services of counsel in the following actions and proceedings:
(1) Any case in which imprisonment or a fine of five hundred dollars ($500.00), or more, is likely to be adjudged;
(2) A hearing on a petition for a writ of habeas corpus under Chapter 17 of the General Statutes;
(3) A post-conviction proceeding under Chapter 15 of the General Statutes;
(4) A hearing for revocation of probation, if confinement is likely to be adjudged as a result of the hearing;
(5) A hearing in which extradition to another state is sought;
(6) A proceeding for judicial hospitalization under Chapter 122, Article 7 (Judicial Hospitalization) or Article 11 (Mentally Ill Criminals), of the General Statutes and a proceeding for involuntary commitment to a treatment facility under Article 5A of Chapter 122 of the General Statutes;
(7) A civil arrest and bail proceeding under Chapter 1, Article 34, of the General Statutes;
(8) In the case of a juvenile, a hearing as a result of which commitment to an institution or transfer to the superior court for trial on a felony charge is possible;

provide a complete range of legal services to indigents and to hold that a duty to provide general legal services to indigents results whenever the State imprisons an indigent would be to reward criminals for their crimes, thus undermining the deterrence theory of punishment. It would also unreasonably interfere with the State's efforts to deal with the gargantuan problem of crime and rehabilitation. The State's resources, especially at the present time, are sharply limited; therefore, the allocation of large sums of money to create law libraries necessarily detracts from what the General Assembly of North Carolina and the North Carolina Department of Correction no doubt consider more valuable programs. Furthermore, an example of how invidious is the holding of the lower courts is the fact that it discourages states from decentralizing and reducing the size of their prisons. If this Court holds that States must affirmatively provide prisoners with such expensive, yet nonessential services such as well-equipped law libraries, the States will be forced to think twice before opening numerous small facilities designed, such as in the State of North Carolina, to keep prisoners as close as possible to family and community where rehabilitation can most easily be accomplished.

Furthermore, as will be brought out more fully in the equal protection argument, the federal courts do not sit as co-administrators of state prisons. They are not required, nor even empowered, to weigh the State's interests against the individual's

(9) A hearing for revocation of parole at which the right of counsel is provided in accordance with the provisions of Chapter 148, Article 4, of the General Statutes;
(10) A proceeding for sterilization under Chapter 35, Article 7 (Sterilization of Persons Mentally Ill and Mentally Retarded) of the General Statutes; and
(11) Chapter 108, Article 4, of the General Statutes.
(b) In each of the actions and proceedings enumerated in subsection (1) of this section, entitlement to thd services of counsel begins as soon as feasible after the indigent is taken into custody or service is made upon him of the charge, petition, notice or other initiating process. Entitlement continues through any critical stage of the action or proceeding, including, if applicable:
(1) An in-custody interrogation;
(2) A pretrial identification procedure which occurs after formal charges have been preferred and at which the presence of the indigent is required;
(3) A hearing for the reduction of bail, or to fix bail if bail has been earlier denied;
(4) A preliminary hearing;
(5) Trial and sentencing; and
(6) Review of any judgment or decree pursuant to G.S. 7A-27, G.S. 7A-30(1), G.S. 7A-30(2), and G.S. 15-222.

rights to determine the best accomodation of these often conflicting interests. That is the state prison administrator's job. The federal courts sit only to review the official's initial determination for constitutional error. It is therefore respectfully submitted that North Carolina's initial decision of how to assist its indigent prisoners in the courts (which includes appointment of counsel on direct appeals, in habeas corpus, in post conviction, upon certiorari to the North Carolina Court of Appeals from the denial of post conviction relief, as well as non-interference with mutual inmate assistance, and the creation of an Inmate Grievance Commission, N.C. G.S. 148-101, et seq.) is eminently reasonable.[9] The District Court therefore abused its discretion and indeed exceeded its powers when it puts itself in the place of the administrators, analyzing the entire situation in intricate detail, and issuing most detailed of orders to Petitioners.[10]

Recent decisions to this Court indicate that it is not a simple weighing of the State's interests against the inmate's rights that federal courts must undertake. In PROCUNIER v. MARTINEZ, 416 U.S. 396, 420 (1974) this Court stated:

> [P]rison administrators are not required to adopt every proposal that may be thought to facilitate prisoner access to the courts. The extent to which that right is burdened by a particular regulation or practice must be weighted against the legitimate interest of penal administration and the proper regard that judges should give to the expertise and discretionary authority of correctional officials.

[9]The State of North Carolina has established a complete procedure for collateral review of convictions, N.C. G.S. 15-217, et seq., Post Conviction Hearing Act, which provides for the appointment of Counsel, N.C. G.S. 15-219. See, also, N.C. G.S. 7A-451(a) (3). (See fn. 8, supra.) The appointment of counsel continues through the filing of the petition for writ of certiorari in the North Carolina Court of Appeals to review the judgment of the post conviction court. N.C.G.S. 15-222. See, also N.C.G.S. 7A-451(b) (6).

[10]Consider, for example, the District Court's second modification of the proposed plan. Under this provision, the District Court has, under threat of its awesome contempt power, forbidden any prison official from ever discarding any advance sheet volume of any of the reports required to be maintained in the libraries. Because the printed advance sheets will inevitably begin to fall apart and will be of no use to anyone, this Order is patently unreasonable.

What is missing from the GILMORE decision and the lower court decisions in this case is any "proper regard that judges should give to the expertise and discretionary authority of correctional officials."

Again, in PELL v. PROCUNIER, 417 U.S. 817 (1974), this Court, there dealing with state prisoners' freedom of expression in the context of prison regulations that severely inhibited the ability of the news media to interview prisoners, said of the prison's efforts to reconcile prisoners' First Amendment rights with the needs of the institution for security and discipline:

> "So long as reasonable and effective means of communication remain open and no discrimination in terms of content is involved, we believe that, in drawing such lines, prison officials must be accorded great latitude. CRUZ v. BETO, 405 U.S. 319 at 321." 417 U.S. at 818

The justification for this great deference was best expressed by this Court in PREISER v. RODRIQUEZ, 411 U.S. 475, 491-92 (1973):

> It is difficult to imagine an activity in which a State has a stronger interest, or one that is more intricately bound up with state laws, regulations, and procedures, than the administration of its prisons.

Fundamental notions of federalism and federal-state comity, therefore, place a heavy restraint on the vast equity powers of the United States Courts whenever the propriety of state actions, especially with regard to state prisons, is challenged before them. Thus, the federal courts should not engage in a full scale de novo reevaluation of prison problems whenever prisoners complain about the administrative response to those problems; rather, they should reevaluate the administrators response itself, according that response great latitude. It is submitted that the District Court and the Court of Appeals in this case gave no latitude whatsoever to the state, ignoring the state's showing that it had

done much in the way of assisting indigents in the courts, and defining the library materials it found to be desirable down to the exact number of copies of the Habeas Corpus Statute to be maintained. The state respectfully objects to this unwarranted intrusion by the federal government into its province and urgently requests this Court to restrain the lower federal courts from further attempts to participate so intimately in state penal affairs.

No doubt, courts receiving inartfully drawn petitions have yearned for the pen to be held by a legal scholar; however, this is not a sufficient reason to establish law libraries in prisons. This proposition does not realistically appraise their use by numbers, effect or subject, nor are they needed or constitutionally required. Although the District Court, in tracking the language of GILMORE v. LYNCH, supra, stated that:

> . . . This court takes notice that more than mere facts are necessary in order to file a Petition for Relief by way of habeas corpus, for example. A prisoner should note the rules concerning venue, exhaustion of remedies, jurisdiction, and proper parties respondent. All too often, such points are raised in the respondents' brief and answer, and the prisoner, who had no way of realizing his initial mistakes, is left with the task of filing a traverse to the cited authority which he has no means of obtaining. He should know which facts are significant to the Court, and which facts are unnecessary and confusing. (Supp. App. pp 4,5)

It is interesting to note that this is the opposite of the position taken by Mr. Justice White in his dissenting opinion in JOHNSON v. AVERY, supra:

> Habeas Corpus petitions, as the majority notes, are relatively easy to prepare: they need only set out the facts giving rise to a claim for relief and the judge will apply the law appointing a lawyer for the prisoner and giving him a hearing when appropriate. This fact does not buttress the unregulated jailhouse lawyer, but undermines it. To the extent that it is easy to state a claim, any prisoner can do it and need not submit to the mercies of a jailhouse lawyer . . .[11]

Those of us who work with prisoners petitions know that they are written by only a small number of inmates for a very small number of the prison population. Therefore, the number of inmates who would benefit from the establishment of law libraries, assuming for the moment, that there might be some benefit, would be miniscule.

The establishment of prison law libraries will not contribute to rehabilitation and will not enure to the benefit of anyone or the institution. Accepting this premise, the probable result of the establishment of prison law libraries will not result in a benefit to society.

Law is not a science, and highly educated, devoted judges and practicing attorneys sometimes find it difficult to read a statute, a legal treatise or an opinion and determine its precise meaning.

> Jails and penitentiaries include among their inmates a high percentage of persons who are totally or functionally illiterate, whose educational attainments are slight, and whose intelligence is limited. . . . JOHNSON v. AVERY, supra, at 487.

It is respectfully submitted that the tools of the trade of the legal profession, if furnished to prison inmates, would be placed in the hands of individuals ill equipped to use them.

II

THE FAILURE OF NORTH CAROLINA TO PROVIDE EXTENSIVE LEGAL LIBRARY FACILITIES TO INDIGENT PRISONERS IS NOT A DENIAL OF EQUAL PROTECTION.

In ROSS v. MOFFITT, 417 U.S. 600 (1974), this Court considered the constitutional necessity of the appointment of counsel to seek discretionary review. Although set in a different

[11] According to the 1975 Annual Report of the Director of the Administrative Office of the United States Courts, state court prisoner filed 7,843 habeas corpus petitions in the United States District Courts, 275 of which were filed in the United States District Courts for the State of North Carolina. In 1974, 275 habeas corpus were also filed by State prisoners in the United States District Courts for the State of North Carolina.

context, the rationale of MOFFITT is equally applicable to the question of whether or not a state is required by the constitution to furnish law libraries to prisoners.

> Despite the tendency of all rights "to declare themselves absolute to their logical extreme", there are obviously limits beyond which the equal protection analysis may not be pressed without doing violence to the principles recognized in other decisions of this Court. The Fourteenth Amendment "does not require absolute equality or precisely equal advantages."

In MOFFITT, Justice Rehnquist quoted from DOUGLAS v. CALIFORNIA, 372 U.S. 353 (1963):

> . . . But it is appropriate to observe that the state can, consistently with the Fourteenth Amendment, provide for differences so long as the result does not amount to the denial of due process or an "invidious discrimination". Absolute equality is not required; lines can be and are drawn and we often sustain them.

After recounting the necessity for counsel at the trial stage required by the due process clause, Mr. Justice Rehnquist wrote:

> By contrast, it is ordinarily the defendant, rather than the state who initiates the appellate process, seeking not to fend off efforts of the State's prosecutor but rather to overturn a finding of guilt made by a judge or jury below. The defendant needs an attorney on appeal not as a shield to protect him against being "hailed into court" by the state and stripped of his presumption of innocence, but rather as a sword to upset the prior determination of guilt. This difference is significant for while no one would agree that the state may simply dispense with the trial stage of proceedings without a criminal defendant's consent, it is clear that the state need not provide any appeal at all. The fact that an appeal has been provided does not automatically mean that a state then acts unfairly by refusing to provide

> counsel to indigent defendants at every stage of the way. Unfairness results only if indigents are singled out by the state and denied meaningful access to that system because of their poverty. . . .

Finally, the Court wrote:

> The fact that a particular service might be of benefit to an indigent defendant does not mean the service is constitutionally required. The duty of the state under our cases is not to duplicate the legal arsenal that may be privately retained by a criminal defendant in a continuing effort to reverse his conviction, but only to assure the indigent defendant an adequate opportunity to present his claims fairly. . . .

Petitioners submit that North Carolina has also been "fair," the appropriate standard in these cases, with respect to the preparation of writs. Furthermore, it is respectfully submitted that if a state need not provide an appeal nor provide counsel for discretionary review, if the state is not required to equalize economic conditions and is not mandated to provide elective benefits, it is not required by the Constitution to furnish law libraries to prisoners.

It is also of interest to note of ROSS v. MOFFITT, supra, that it examined the state's obligation to provide counsel to prisoners seeking relief created by federal statutes and provided by federal courts. The Court noted that DOUGLAS had been based on the reasoning that a state did not have to provide any appeal to a criminal defendant, but that if it did, it was constitutionally required to provide it equally to rich and poor alike. It then noted that a state prisoner's desire to seek a remedy provided not by the state but by the federal government was altogether different from the desire to exhaust state remedies so far as the state's duty with respect to providing counsel is concerned:

> The suggestion that a state is responsible for providing counsel to one petitioning this Court simply because it

> initiated the prosecution which led to the judgment sought to be reviewed is unsupported by reason or authority. It would be quite as logical under DOUGLAS and GRIFFIN, and indeed, perhaps more so, to require that the federal government or this Court furnish and compensate counsel for petitioners who seek certiorari here to review state judgments of conviction. Yet this court has followed a consistent policy of denying applications for appointment of counsel . . . [I]t would be odd indeed to read the Fourteenth Amendment to impose such a requirement on the States, and we decline to do so. 417 U.S. 617-18.

Although this Court was discussing certiorari relief, the force of its logic applies equally to federal habeas corpus and civil rights relief. Insofar as Respondents argue that the State must assist its prisoners in the preparation of writs to be filed in federal courts, ROSS v. MOFFITT authoritatively rejects their argument. Furthermore, if the State's failure to appoint counsel to the indigents to aid in writ writing is not a denial of equal protection, then *a fortiori* the mere failure to provide legal materials is not such a denial.

The remarks of Chief Justice Burger, concurring in CRUZ v. BETO, 405 U.S. 319 (1972), are also informative in delineating the scope of rights afforded to state prisoners under the equal protection clause of the Fourteenth Amendment. In CRUZ, a Buddhist inmate alleged denial of equal protection on the grounds that, while prisoners could attend Protestant, Catholic, or Jewish religious services and were rewarded through the prison merit system for doing so, the prison apparently discouraged him from the practice of his religion. Concurring in this Court's judgment that the State had to provide a reasonable opportunity for inmates to practice their religious beliefs, the Chief Justice noted:

> There cannot possibly be any constitutional or legal requirement that the government provide materials for every religion and sect practiced in this diverse country. At most, Buddhist materials cannot be denied to prisoners if someone offers to supply them. 405 U.S. at 323.

These remarks have their analogue in the right of access to the courts area in the notion that a state is forbidden to interfere with a prisoner's attempt to go to court but has no affirmative duty to take him there. Thus, the authoritative reasoning of this Court rejects Respondents' claim that the State has deprived indigents of equal protection of the law.

Finally, to hold that a state is constitutionally mandated to guarantee access to the courts by furnishing law libraries to prisoners is inconsistent with facts. Obviously, expertise is not required.[12] In McCRAY v. BURRELL, 367 F. Supp. 1191 (D. Md. 1973), rev'd, 516 F. 2d 357 (4th Cir. 1975), cert. granted, No. 75-44 (U.S., November 3, 1975), Chief Judge Northrop wrote:

> A look at the Annual Report of the Director of the Administrative Office of the United States Courts for the fiscal year ending June 30, 1972 and the semi-annual report of the Director for the first half of fiscal year 1973, lend statistical evidence to our conviction that there is little hope of relief from the swelling ranks of petitioning prisoners. At the appellate level, nearly 31% of the prisoner appeals filed nationwide were filed in the United States Court of Appeals for the Fourth Circuit for fiscal year 1972. This percentage rose to 36.1% during the first half of 1973. More importantly, prisoner cases accounted for 38% of the cases filed with the Fourth Circuit in 1972, and 45.3% for for the first part of 1973.[13]

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[12]See, JOHNSON v. AVERY, supra.

[13]According to the 1975 Annual Report of the Director of the Administrative Office of the Courts, State court prisoners in the Fourth Circuit filed 1,047 habeas corpus petitions and 1,184 civil rights petitions in the United States District Courts. Of the total, 275 habeas corpus petitions and 302 civil rights complaints were filed by state court prisoners in the United States District Courts for the Eastern, Middle and Western Districts of North Carolina. In other words, out of the total 1,412 private civil filings in the United States District Courts for the State of North Carolina during 1975, 579 (including 2 listed as mandamus and other) were filed by state court prisoners. By comparison, the national total was 85,541 private civil actions filed, of which 14,260 were state court prisoner petitions, an increase of 900 over 1974 or a 17% increase for the year. Nationally, prisoner petitions have represented approximately 18% of the total civil cases filed in the United States District Courts; however, in 1975 state court prisoner filings represented 41% of all private civil cases in North Carolina.

The North Carolina Department of Correction does not prohibit inmates from preparing writs for others. Therefore, it should not be required to establish law libraries with the collateral hazards of furnishing "adequate" law libraries, with "adequate" access, with "adequate" circulation and "adequate" replacement procedures.

CONCLUSION

The concept of "free access" to the Courts does not justify the establishment of extensive legal research facilities making available to untrained individuals with neither an understanding nor respect for the law, resources not readily available to the greater percentage of attorneys practicing in the State of North Carolina. Furthermore, the State of North Carolina has not yet found itself financially able to provide such extensive legal research facilities to either the Judges of our District or Superior Courts or the District Attorneys of this State. And, in the current economy, the cost of installation and maintenance of such facilities which are unavailable to the majority of the attorneys and the members of the judiciary of the State of North Carolina except if they travel to use the libraries of the various law schools in this State or the library of the Supreme Court of North Carolina, would of necessity result in a diversion of resources critically needed by the Division of Prisons. "Some state. . . . may conceivably find that other claims for public funds within or without the criminal justice system preclude the implementation of such a policy at the present time. . . ." ROSS v. MOFFITT, supra at 618.

Finally, in light of Respondents' histories in the courts[14] and North Carolina's generous funding of G.S. 7A-450, *Entitlement of Indigent Persons Generally*,[15] which for the current fiscal year is $5,596,769.00, it is appropriate to consider Judge Campbell's admonition that some courts have raced "headlong into the breech in a seemingly frantic effort to prove more royal than the king." Campbell, William J., Delays In Criminal Cases, 55 F.R.D. 229, 238 (1972).

[14]See, Appendix, *Respondents' Histories in the Courts*, infra at p 25.

[15]See fn. 1, supra.

For the foregoing reasons, we respectfully submit that this case should be reversed and remanded to the United States Court of Appeals for the Fourth Circuit.

Respectfully submitted.

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Appendix

RESPONDENTS' HISTORIES IN THE COURTS[1]

TURNER, etc., v. MORGAN, et al.

No. 4277—Raleigh (E.D. N.C.)
No. 74-2379 (4th Cir.)

1. *Donald W. Morgan:*

Donald W. Morgan is a "writ writer." See, for example, the pleadings filed in BRADFORD v. WEINSTEIN, 357 F. Supp. 1127 (E.D. N.C. 1973), rev'd, 519 F. 2d 728 (4th Cir. 1974), dismissed as moot, ___ U.S. ___ (1975), prepared by "Donald W. Morgan, Prisoner Legal Assistant, Post Office Box 137, Tillery, North Carolina 27887 for the Plaintiffs," or, in fact, the pleadings filed in this case by these Plaintiffs which are similarly captioned.

Morgan was extradited from the State of South Carolina to stand trial upon charges pending in the Rutherford County (N.C.) Superior Court. On May 14, 1969, the Honorable W. K. McLean, Judge of the Superior Court of North Carolina, appointed Hollis M. Owens, Jr., Esq., as Morgan's counsel. On October 7, 1969, counsel prepared and filed a Writ of Habeas Corpus on Morgan's behalf in the North Carolina Superior Court, and on October 7, 1969, the Honorable P. C. Froneberger, Judge of the Superior Court of North Carolina,

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[1]The Respondents' histories conclude with the filing of the Complaint in each case.

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Leave to Proceed in Forma Pauperis was granted April 4, 1973, in MORGAN v. TURNER, supra, and the Complaint was served on the Defendants on April 19, 1973.

In SMITH v. BOUNDS, supra, Leave to Proceed in Forma Pauperis was granted on May 25, 1972, and the Defendants were served May 26, 1972.

In HARRINGTON v. HOLSHOUSER, supra, Leave to Proceed in Forma Pauperis was allowed February 23, 1973, and the Defendants were served on March 1, 1973.

directed that a Writ of Habeas Corpus issue and that Morgan be brought before the Honorable Lacy H. Thornburg, Judge of the Superior Court of North Carolina, on October 13, 1969. At the bail reduction hearing, at which Morgan was represented by counsel, Judge Thornburg refused to reduce the bail. Thereupon, Morgan's court appointed counsel, Hollis M. Owens, Jr., Esq., filed a Petition for Writ of Certiorari in the North Carolina Court of Appeals to review Judge Thornburg's Order finding that bail in the amount of Twenty Thousand Dollars ($20,000.00) was not excessive. By Order dated November 20, 1969, the North Carolina Court of Appeals denied the Petition for Writ of Certiorari. *In the Matter of the Imprisonment of Donald Morgan*, No. 69SC417PC. Morgan then presented two applications for Habeas Corpus to the United States District Court for the Eastern District of North Carolina which were denied by Chief Judge Butler on January 8, 1970. MORGAN v. BOUNDS, Civil No. 2496—Raleigh (E.D. N.C. January 12, 1970). On February 3, 1970, Morgan filed Notice of Appeal and by Memorandum Decision dated April 6, 1971, the Fourth Circuit Court of Appeals affirmed the dismissal. MORGAN v. BOUNDS, mem. dec., No. 14,442 (4th Cir., April 6, 1971). Morgan was brought to trial at the March 1970 Criminal Session of the Rutherford County Superior Court while represented by Hollis M. Owens, Jr., Esq., court appointed counsel. From his convictions, Morgan appealed to the North Carolina Court of Appeals, while represented by court appointed counsel, Hollis M. Owens, Jr., Esq. The North Carolina Court of Appeals affirmed his convictions. STATE v. MORGAN, 9 N.C. App. 624, 175 S.E. 2d 294 (1970), cert. denied, 277 N.C. 458 (1971). Morgan subsequently filed a Petition for Post Conviction Review and James M. Bowen, Esq., was court appointed to represent Morgan in the proceedings. On November 5 and 10, 1971, Morgan was provided with a post conviction hearing before the Honorable Sam J. Ervin, III, Judge of the Superior Court of North Carolina. Morgan gave Notice of Appeal and on November 19, 1971, the Court reappointed James M. Bowen, Esq., to perfect Morgan's appeal to the North Carolina Court of Appeals. On January 24, 1972,

James M. Bowen, Esq., court appointed counsel, filed a Petition for Writ of Certiorari on Morgan's behalf in the North Carolina Court of Appeals. By Order dated February 3, 1972, the Court of Appeals denied the Petition. MORGAN v. STATE, No. 72SC29PC. On January 9, 1973, Morgan filed a new Petition for Post Conviction Hearing which was denied without hearing by Order of Honorable Lacy H. Thornburg on January 12, 1973. On March 12, 1973, J. H. Burwell, Jr., Esq., filed a Petition for Writ of Certiorari on Morgan's behalf in the North Carolina Court of Appeals. By Order dated March 27, 1973, the North Carolina Court of Appeals denied the application for Writ of Certiorari. MORGAN v. STATE, No. 73SC67PC.

In addition to the foregoing, see, also, MORGAN v. BOUNDS, Civil No. 2562—Raleigh (E.D. N.C., March 28, 1972); MORGAN v. NORTH CAROLINA, Civil No. 2699—Raleigh (E.D. N.C., December 30, 1971); and MORGAN v. O'NEAL, Civil No. 2702—Raleigh (E.D. N.C., August 17, 1971). Additionally, see, also, MORGAN v. ELLIOT, etc., et al., Civil No. 3293—Asheville (W.D. N.C.) and MORGAN v. HUSKEY, etc., et al., Civil No. 3181—Asheville (W.D. N.C.).

2. *Franklin D. Strader*:

Franklin Delano Strader was charged with Larceny and Murder in warrants issued on February 19, 1969, and with Robbery with Firearms by warrant issued March 17, 1969. On February 21, 1969, the Honorable Allen H. Gwynn appointed Robert R. Blackwell, Esq., to represent Strader. On March 17, 1969, a preliminary hearing was held in the Caswell County Recorder's Court, at which time the State nol prossed the larceny charge and probable cause was found on the Murder and Armed Robbery charges.

At the March 24, 1969 Session of the Caswell County Superior Court, the Grand Jury returned a Bill of Indictment charging Strader with First Degree Murder. On March 25, 1969, Strader, while represented by court appointed counsel, tendered a plea of guilty to Murder in the Second Degree and was sentenced to a term of not less than twenty-five (25) nor more

than thirty (30) years. An appeal was not taken from the conviction.

On May 28, 1969, Strader filed an application for Post Conviction Hearing in the Caswell County Superior Court. On August 21, 1969, D. E. Scarborough, Esq., was court appointed to represent Strader when the matter came on for hearing in Yanceyville, North Carolina, out of term before the Honorable Allen H. Gwynn, Resident Judge, on September 8 and 11, 1969. Judge Gwynn entered a Judgment denying and dismissing the Petition on October 31, 1969. Melzer A. Morgan, Jr., Esq., was court appointed on Janurary 19, 1970, to represent Strader upon a Petition for Writ of Certiorari to the North Carolina Court of Appeals. The Petition was filed on Strader's behalf on March 16, 1970, which upon answer by the State, was denied by Order of the Court in conference on April 3, 1970. STRADER v. STATE, No. 70SC94PC, Spring Session, 1970. On July 3, 1970, Melzer A. Morgan, Jr., Esq., filed a Petition for Writ of Certiorari on Strader's behalf in the Supreme Court of the United States. STRADER v. NORTH CAROLINA, No. 5499, October Term, 1970. The Petition for Writ of Certiorari was denied November 16, 1970. STRADER v. NORTH CAROLINA, 400 U.S. 919, 91 S. Ct. 178, 27 L. Ed. 2d 159 (1970).

On June 11, 1970, Strader submitted for filing in the United States District Court for the Middle District of North Carolina a Petition for Writ of Habeas Corpus which was denied by Memorandum Opinion and Order filed May 26, 1971. STRADER v. POTEAT, et al., No. C-120-G-70 (M.D. N.C., May 26, 1971).

On May 19, 1970, Melzer A. Morgan, Jr., Esq., was appointed by the Honorable James M. Long to represent Strader "through any further proceedings in this matter." On September 11, 1970, before the Supreme Court of the United States had passed upon his Petition for Writ of Certiorari, Strader filed an application for a Writ of Error "Coram Nobis", praying that his original sentence be vacated and that he be granted a new trial. By Judgment dated March 24, 1971, the Honorable Thomas W. Seay, Jr., Judge Presiding, denied relief. On May 21, 1971, Melzer A. Morgan, Jr., Esq., court appointed counsel, filed a Petition for Writ of Certiorari on Strader's behalf in the North Carolina Court of Appeals seeking to review the Judgment entered March 24, 1971, by Judge Seay denying relief. By Order of the Court in conference on June 4, 1971, the North Carolina Court of Appeals denied the Petition for Writ of Certiorari. STRADER v. STATE, No. 71SC177PC, Spring Term, 1971. On September 2, 1971, Melzer A. Morgan, Jr., Esq., court appointed counsel, filed yet another Petition for Writ of Certiorari in the Supreme Court of the United States. STRADER v. NORTH CAROLINA, No. 71-5372, October Term, 1971. The Petition for Writ of Certiorari was denied December 14, 1971. STRADER v. NORTH CAROLINA, 404 U.S. 993, 92 S. Ct. 542, 30 L. Ed. 2d 545 (1971).

On November 26, 1971, Strader filed a ten page typewritten pro se Petition for Writ of Certiorari in the North Carolina Court of Appeals seeking to review an Order entered June 25, 1971, by the Honorable Thomas W. Seay, Jr., Judge Presiding, denying yet another Petition for Post Conviction Relief dated June 14, 1971. The Petition for Writ of Certiorari was denied by the North Carolina Court of Appeals on December 8, 1971. STRADER v. STATE, No. 71SC350PC, Fall Session, 1971.

On May 17, 1972, Strader filed an eleven page pro se Application for Writ of Habeas Corpus in the Supreme Court of North Carolina which was dismissed by Order of the Court in conference on May 24, 1972. STRADER v. BOUNDS, No. 93PC, Spring Term, 1972.

On December 3, 1971, Strader filed a "Petition for Mandamus to Invalidate Sentence in Case No. 2304, in Forma Pauperis." On December 22, 1971, he also filed a "Motion to Supplement Petition for Mandamus, and/or Application for Writ of Habeas Corpus in Forma Pauperis." On January 10, 1972, he filed a "Motion in Arrest of Judgment Case No. 2304." By Order dated March 24, 1972, Strader's applications for relief dated December 3 and 22, 1971, and January 10, 1972, were denied. By Order dated May 17, 1972, Melzer A. Morgan, Jr., Esq., was court appointed to represent Strader upon his Petition for Writ of Certiorari to the North Carolina Court of Appeals. On July 17, 1972, Melzer A. Morgan, Jr., Esq., court appointed counsel,

filed a Petition for Writ of Certiorari on Strader's behalf which was denied by the North Carolina Court of Appeals on August 1, 1972. STRADER v. STATE, No. 72SC242PC.

In addition to the foregoing, see, also, STRADER v. BOUNDS, Civil No. 2927—Raleigh (E.D. N.C., April 7, 1972). In the United States District Court for the Middle District of North Carolina Strader has filed the following:

STRADER v. SCOTT, Civil No. C-19-G-72
(M.D.N.C., July 10, 1972); and
STRADER v. LONG, Civil No. C-94-G-72
(M.D.N.C., July 10, 1972), aff'd,
STRADER v. LONG, mem. dec., No. 72-1872
(4th Cir., March 8, 1973).

Furthermore, in STRADER v. SCOTT, supra, a Civil Action in which Strader was attempting to declare the North Carolina Public Defender Statute unconstitutional because it makes no provision for the Public Defender System in the 17th Judicial District, the district in which he was convicted, the Court found that the State of North Carolina paid the following fees for Strader's representation up to that time:

DATE	ATTORNEY	AMOUNT
April 16, 1969	R. R. Blackwell	$ 200.00
September 29, 1969	B. E. Scarborough	250.00
April 26, 1971	M. A. Morgan, Jr.	100.00
December 30, 1971	M. A. Morgan, Jr.	463.57
January 10, 1972	M. A. Morgan, Jr.	516.84
	TOTAL	$1,530.41

3. *John Henry Russell*:

John Henry Russell was charged with Forgery and Uttering and George Burke, Esq., was court-appointed to represent him upon the charges in the Rowan County Superior Court. At the February 1972 Term, while represented by court appointed

counsel, Russell was convicted of two counts of uttering and thereupon gave Notice of Appeal to the North Carolina Court of Appeals. George L. Burke, Jr., Esq., was reappointed to represent Russell on appeal and in STATE v. RUSSELL, 15 N.C. App. 594, 190 S.E. 2d 414 (1972), the North Carolina Court of Appeals affirmed his conviction. Thereupon, while represented by court appointed counsel, Russell appealed the decision of the North Carolina Court of Appeals to the Supreme Court of North Carolina. On November 15, 1972, the Supreme Court of North Carolina filed its Opinion affirming the decision of the Court of Appeals. STATE v. RUSSELL, 282 N.C. 240 (1972). In addition to the foregoing, while his conviction was on appeal, Russell filed an application seeking a reduction in the amount of the appearance bond and George L. Burke, Jr., Esq., was court appointed to represent Russell at the bond reduction hearing. On January 19, 1973, Russell filed an Application for Writ of Habeas Corpus in the Rowan County Superior Court which was denied by Order filed January 24, 1973 by the Honorable Thomas W. Seay, Jr., Judge Presiding.

BOUNDS, etc., et al., v. SMITH, et al.

No. 3052—Raleigh (E.D. N.C.)
No. 74-2378 (4th Cir.)

1. *Robert (Bobby) Smith*:

At the April 1970, Criminal Session of the Anson County (N.C.) Superior Court, Robert (Bobby) Smith was found guilty after a jury trial on a charge of attempted armed robbery. Appeal was unsuccessful, STATE v. SMITH, 278 N.C. 476, 180 S.E. 2d 7 (1971). Smith was represented by court appointed counsel, F. O'Neil Jones, Esq., both at trial and on appeal.

Since Robert (Bobby) Smith's conviction, he has filed the following in the United States District Court for the Eastern

District of North Carolina:

ROBERT (BOBBY) SMITH v. V. L. BOUNDS, etc., et al., Civil No. 2650—Raleigh (E.D. N.C. June 8, 1972), aff'd, No. 72-2387 (4th Cir. November 27, 1972);

ROBERT (BOBBY) SMITH v. NORTH CAROLINA, Civil No. 2652—Raleigh (E.D. N.C. March 5, 1971);

ROBERT (BOBBY) SMITH v. V. L. BOUNDS, etc., et al., Civil No 2653—Raleigh (E.D. N.C. March 11, 1971);

ROBERT (BOBBY) SMITH v. ROBERT W. SCOTT, etc., et al., Civil No. 2791—Raleigh (E.D. N.C. April 29, 1974);

ROBERT (BOBBY) SMITH v. V. LEE BOUNDS, etc., et al., Civil No. 2886—Raleigh (E.D. N.C. April 7, 1972); and

ROBERT (BOBBY) SMITH v. VERNON LEE BOUNDS, etc., et al., Civil No. 2914—Raleigh (E.D. N.C. March 14, 1972), aff'd No. 73-1658 (4th Cir. June 8, 1973).

In the United States District Court for the Western District of North Carolina, Charlotte Division, Robert (Bobby) Smith has also filed the following proceedings:

ROBERT (BOBBY) SMITH v. EDDIE PRIVETT, Civil No. 2715—Charlotte;

ROBERT (BOBBY) SMITH v. RALPH ALLEN, et al., Civil No. 2716—Charlotte;

ROBERT (BOBBY) SMITH v. STANLEY BLACKLEDGE AND THE STATE OF NORTH CAROLINA, Civil No. 2907—Charlotte, aff'd, No. 72-2381 (4th Cir. June 21, 1973); and

ROBERT (BOBBY) SMITH v. DOCTOR STANLEY BLACKLEDGE, Civil No. 2848—Charlotte.

In addition to the foregoing, he has also filed various petitions in the Supreme Court of North Carolina, including:

ROBERT (BOBBY) SMITH v. DR. STANLEY BLACKLEDGE, No. 42PC, Spring Term, 1972; and

ROBERT (BOBBY) SMITH v. NORTH CAROLINA, No. 127PC, Spring Term, 1970.

The Petitions he has filed in the various Superior Courts in the State of North Carolina are too numerous to mention.

2. *Ronald D. Carnes*:

Robert D. Carnes filed a civil proceeding in the United States District Court for the Middle District of North Carolina—Greensboro Divison, CARNES v. BLACKLEDGE, No. D-275-G-71 (M.D. N.C. 1971) and in the United States District Court for the Eastern District of North Carolina, CARNES v. GARRISON, Civil No. 2978—Raleigh (E.D. N.C.).

3. *Richard A. Carter*:

Richard A. Carter has filed an "Application for Writ of Habeas Corpus Subpoena Decus Tacem Court Order in Forma Pauperis" in the Forsyth County Superior Court, RICHARD ALLEN CARTER v. THE CLERK OF FORSYTH COUNTY SUPERIOR COURT, WINSTON-SALEM, N.C.

4. *Bradford Mizell Lilley*:

Bradford Mizell Lilley was a safekeeper committed to the custody of the North Carolina Department of Correction pending appeal from his conviction of assault with a deadly weapon, with intent to kill, inflicting serious injury, imposed at the February 4, 1972 Session of the Guilford County Superior Court. Lilley was represented at trial in the Guilford County Superior Court, upon appeal to the North Carolina Court of Appeals, and upon Petition for Writ of Certiorari to the Supreme Court of North Carolina, by the Public Defender for the Eighteenth Judicial District of North Carolina. STATE v. JENNINGS, LILLEY AND MEDLEY, 16 N.C. App. 205, 192 S.E. 2d 46 (1972), cert. denied, 282 N.C. 428 (1972).

•••

According to the Affidavit filed herein by S. B. O'Neal, Correctional Officer in charge of the Writ Room at North Carolina Central Prison:

That the Plaintiff, Robert (Bobby) Smith, has submitted 59 petitions since being located at Central Prison, 9 of which were handwritten. That Plaintiff, Richard A. Carter has submitted 2 petitions since being located at Central Prison. That Plaintiff, Ronald D. Carnes, has submitted 7 petitions, 1 handwritten, since being located at Central Prison. That Plaintiff, Bradford Lilley, has submitted 6 petitions since being located at Central Prison.

HOLSHOUSER, etc., et al. v. HARRINGTON, et al.

No. 790—Washington (E.D.N.C.)
No. 74-2380 (4th Cir.)

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1. *John Harrington*:

Immediately subsequent to filing the Complaint in this civil action, HARRINGTON, et al., v. HOLSHOUSER, etc., et al., Civil No. 790—Washington (E.D. N.C.), Harrington filed on March 2, 1973 a civil action in HARRINGTON v. HOLSHOUSER, etc., et al., Civil No. 791—Washington, (E.D. N.C.), contending that his disciplinary conviction for possession of a dangerous weapon violated the requirements of due process. See, also, "Application fro Writ of Habeas Corpus—In Forma Pauperis" filed by Plaintiff Harrington in MARSHBURN AND HARRINGTON v. M. S. LEE, et al.,

2. *Ray Forbes*:

Ray Forbes was convicted March 2, 1972, in the Wayne County (N.C.) Superior Court of assault with a deadly weapon and sentenced to a term of two years in the custody of the North Carolina Department of Correction. On March 7, 1972, he filed a Motion to Dismiss Indictment in the North Carolina Court of Appeals, FORBES v. STATE, No. 72SC78P, and on March 22, 1972, he filed a Petition for Writ of Certiorari in the Supreme Court of North Carolina, FORBES v. NORTH CAROLINA, No. 54PC. On March 29 and April 19, 1972, he

filed Motions for Plenary Hearing to Set Bail in the Wayne County Superior Court. He also filed a Motion for Speedy Trial on December 13, 1972, in the Wayne County Superior Court. On February 26, 1973, Forbes was granted leave to proceed in forma pauperis for the Petition for Writ of Habeas Corpus dated November 14, 1972, filed with the Clerk of the United States District Court for the Eastern District of North Carolina. FORBES v. NORTH CAROLINA, No. 4216—Civil (E.D. N.C. February 28, 1973), dismissed by Memorandum Decision and Order, June 4, 1973.

On February 27, 1973, in the Wake County (N.C.) Superior Court, Ray Forbes filed a paperwriting which he entitled "Motion to Dismiss for Failure to Prosecute." In this paperwriting, Forbes schedules the instruments he has filed in a post conviction proceeding pending in the Wake County Superior Court. He advises in paragraph 3 that on February 5, 1973, he filed a "Motion for Application for Temporized Writ of Habeas Corpus" which was "honored" by the court on February 14, 1973. He subsequently filed a Motion to Dismiss for Failure to Prosecute. He also filed a paperwriting in the United States District Court for the Eastern District of North Carolina pursuant to 42 U.S.C. v 1983, FORBES v. BRASWELL and STRICKLAND, No. —Civil (E.D. N.C.), seeking damages from his attorneys. In that paperwriting he refers to having filed a "Civil Complaint to Institute Civil Action and Application for Permanent Injunction on or about December 12, 1972 in the Wayne County (N.C.) Superior Court. He also refers to the Motion for Speedy Trial which he filed on December 13, 1972 in the Wayne County Superior Court.

Supreme Court, U. S.
FILED
JUL 22 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 75-915

VERNON LEE BOUNDS, et al.,

Petitioners,

v.

ROBERT (BOBBY) SMITH, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR RESPONDENTS

BARRY NAKELL
School of Law
University of North Carolina
Chapel Hill, North Carolina 27514

Court-appointed Attorney for Respondents

Washington, D.C. • CLB PUBLISHERS' • LAW PRINTING CO. • (202) 393-0625

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 75-915

VERNON LEE BOUNDS, et al.,

Petitioners,

v.

ROBERT (BOBBY) SMITH, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR RESPONDENTS

SUMMARY OF ARGUMENT

In *Younger v. Gilmore,* 404 U.S. 15 (1971), affirming *Gilmore v. Lynch,* 319 F. Supp. 105 (N.D. Cal. 1970) (three-judge court), this Court, after briefing and argument, unanimously affirmed the judgment of a three-judge court which held that a state is constitutionally obligated to protect its prisoners' right of access to the courts by providing them access to the law in the form of adequate law books or a reasonable

alternative. *Gilmore* has been widely acclaimed and has received support from all of the Courts of Appeal that have had occasion to pass on it, from the United States Government, from national commissions, from the American Bar Association, from the American Correctional Association and individual correctional administrators, from the American Library Association and the American Association of Law Libraries, and from many other organizations as well as from the legal literature. Almost every state is in compliance with *Gilmore*. Many have gone beyond its minimal requirements and provided comprehensive legal services programs, often using law students and trained inmate paralegals as well as lawyers, in addition to or instead of law libraries. The experience with all of these programs has been rewarding. Prisoners have received the constitutionally required help with the preparation of their court actions, and in the process frivolous petitions have been reduced by as much as half and the quality of those petitions that have been filed has improved considerably.

North Carolina does nothing to help its prisoners overcome the obstacles which incarceration imposes on their access to the courts. It provides its prisoners with no law books, except a few at its maximum security prison, and no legal assistance in the preparation of state or federal collateral attacks on their convictions, in the preparation or pursuit of state or federal actions challenging the conditions of their confinement, or in the resolution of detainers lodged against them.

In finding that North Carolina was therefore in violation of its constitutional responsibility, and in approving the State's plan for bringing itself into compliance, the District Court and the Court of

Appeals accorded the proper regard for the expertise and discretion of prison officials. North Carolina has not suggested any respect in which those courts disregarded their expertise or unreasonably disturbed their discretion. They left the design of the method by which North Carolina would comply with *Younger v. Gilmore* to the State, and approved the plan submitted by the State with only minor modifications.

ARGUMENT

NORTH CAROLINA IS IN VIOLATION OF ITS CONSTITUTIONAL OBLIGATION TO PROTECT ITS PRISONERS' RIGHT TO MEANINGFUL ACCESS TO THE COURTS BECAUSE IT HAS FAILED TO PROVIDE THEM LAW BOOKS FOR A REASONABLE ALTERNATIVE.

I.

INTRODUCTION.

(A) *The North Carolina Department of Correction and its Prisoners.* The North Carolina Department of Correction administers the prison system in North Carolina, and has custody of all persons serving prison sentences in excess of thirty days. N.C. Gen. Stat. §148-4 (1975 Supp.). Its inmates have been convicted of crimes ranging from the felonies of murder and rape to the misdemeanors of non-support, trespassing and drunkenness. See North Carolina Department of Correction, *State Correction Statistical Abstract* 2 (March 1976). This includes the largest death row population in

the country, a situation that should change shortly as a result of *Woodson v. North Carolina*, 44 U.S. L. Week 5267 (1976). In addition, the Department of Correction has custody of "safekeepers" who have been convicted of crimes and are in custody pending their appeals, N.C. Gen. Stat. §15-183 (1975 Supp.); see generally *Kersh v. Bounds*, 501 F.2d 585 (4th Cir. 1974), and occasionally "safekeepers" who have not been convicted of crimes but are in custody pending their trials when certain conditions necessitate their being held in the prisons, N.C. Gen. Stat. §162-39 (1975 Supp.), rather than in the county jails as is the general practice. N.C. Gen. Stat. §15-126 (1975 Supp.). The prisoners are housed in eighty prisons situated in sixty-seven of the one hundred counties in the state. App. 11. At the time this case was before the District Court the average daily population was 10,000 inmates. App. 11. As petitioners point out, the prison system is now overcrowded with 13,000 prisoners. Brief for Petitioners 7, n. 3. More than 10,000 are serving time for felony convictions; over 3,000 have sentences of ten years or more, 3,000 have sentences of five to ten years, and another 3,500 have sentences of two to five years. North Carolina Department of Correction, *State Correction Statistical Abstract* 29 (March 1976). North Carolina ranks fifth in the nation in the size of its prison population, and is catching up to California, Texas, New York and Florida because our State led the nation in the number of new prison commitments in 1974 and 1975. National Clearinghouse for Criminal Justice Planning and Architecture, *Transfer*, "United States Incarceration and Commitment Rates" (University of Illinois 1976). Already North Carolina ranks first in the nation in the percentage of its residents who are locked up in its prisons. *Id.*

Many persons charged with crime in North Carolina and awaiting trial are, of course, not in custody. N.C. Gen. Stat. §15A-533 (1975). In addition, many who have been convicted of crimes and sentenced are not in custody. Some are released pending appeal. N.C. Gen. Stat. §15A-536 (1975). Many are sentenced to probation and never go to prison. N.C. Gen. Stat. §15-197 (1975). Others have served time and are on parole. N.C. Gen. Stat. §148-58 (1975 Supp.); see also, N.C. Gen. Stat. §15-197.1 (1975 Supp.) (split sentences).

Those who are not in custody are, of course, free to earn funds with which to retain counsel. In addition, they are free to use several law libraries across the state.[1] By contrast, those who, like respondents, are imprisoned are, naturally, deprived of those opportunities. Petitioners, as their custodians, prohibit them from visiting any of the several public law libraries in the

[1] Those law libraries include the following: in Chapel Hill at the University of North Carolina, the Law School library consisting of more than 150,000 volumes, and the Institute of Government library, consisting of more than 14,000 volumes; in Charlotte, the Charlotte Law library, consisting of more than 18,000 volumes; in Durham, the Duke University Law School library, consisting of more than 180,000 volumes, and the North Carolina Central University Law School library, consisting of more than 33,000 volumes; in Greensboro, the law collection at North Carolina Agricultural and Technical College, consisting of more than 12,000 volumes; in Raleigh, the North Carolina Supreme Court library, consisting of more than 75,000 volumes; and in Winston-Salem, the Wake Forest University Law School library, consisting of more than 51,000 volumes. American Association of Law Libraries, *Directory of Law Libraries* 36 (CCH 1974). A new law school will open this fall at Campbell College in Buies Creek.

state. They also restrict their opportunities to accumulate funds with which to purchase their own law books or hire attorneys; under state law the maximum wage that prisoners may earn is one dollar per day. N.C. Gen. Stat. §148-18 (1975 Supp.). Moreover, petitioners forbid state prisoners to receive law books except "directly from the publisher." Regulation .0101 of Subchapter 2D, Policies and Procedures of the North Carolina Department of Correction, Division of Prisons.[2] The effect of this regulation is that prisoners must learn the names of the publishers of law books before they can order them, they may not receive law books as gifts from family, friends, lawyers or others, and they may not take advantage of special sales opportunities for law books, such as opportunities to buy them used or on sale. While each of these restrictions may be permissible in its own right,[3] individually and collectively they impair the constitutional right of state prisoners to meaningful access to

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[2]The Secretary of Correction has authority to promulgate rules and regulations to which all state prison inmates are subject. N.C. Gen. Stat. §148-11 (1975 Supp.) He has done so and those rules and regulations are public documents on file in the office of the Attorney General. N.C. Gen. Stat. §150A-59 (1975 Supp.).

[3]With regard to the "publisher only" rule, see *Cruz v. Beto*, 405 U.S. 319, 323 (1972) (Burger, C.J. concurring: "Buddhist materials cannot be denied to prisoners if someone offers to supply them."); *Cruz v. Hauck*, 515 F.2d 322, 333 (5th Cir. 1975); *Battle v. Anderson*, 376 F. Supp. 402, 435 (E.D. Okla. 1974); *McCarty v. Woodson*, 465 F.2d 822, 826 (10th Cir. 1972); *Van Ermen v. Schmidt*, 343 F. Supp. 377, 379 (W.D. Wis. 1972); *contra*, *Hamrick v. Raines*, 376 F. Supp. 1273, 1275 (D. Kan. 1974).

the courts unless the prison system provides them a reasonable alternative. See *Battle v. Anderson*, 376 F. Supp. 402, 426 (E.D. Okla. 1974); *Hooks v. Wainwright*, 352 F. Supp. 163, 167 (M.D. Fla. 1972).

(B) *The Right to Access to the Courts.* Prisoners' constitutional right of meaningful access to the courts is well established in the decisions of this Court. *Wolff v. McDonnell*, 418 U.S. 539, 579 (1974); *Procunier v. Martinez*, 416 U.S. 396, 419 (1974); *Younger v. Gilmore*, 404 U.S. 15 (1971), affirming *Gilmore v. Lynch*, 319 F. Supp. 105 (N.D. Cal. 1970) (three-judge court); *Johnson v. Avery*, 393 U.S. 483, 483, 485 (1969); *Cochran v. Kansas*, 316 U.S. 255 (1942); *Ex Parte Hull*, 312 U.S. 546, 549 (1941). It may, indeed, be their most important constitutional right because it is necessary to the preservation of all others. *Procunier v. Martinez, supra* at 419; *Cruz v. Hauck*, 475 F.2d 475, 476 (5th Cir. 1973); *Johnson v. Anderson*, 370 F. Supp. 1373, 1383 (D. Del. 1974); *Van Ermen v. Schmidt*, 343 F. Supp. 377, 379 (W.D. Wis. 1972); Toal, *Recent Developments in Correctional Case Law* 6 (S.C. Dept. of Corrections 1975). The right to access to the courts is based in the first and fourteenth amendment right to petition all branches of government for a redress of grievances, in the fifth and fourteenth amendment guarantees of due process and equal protection of the law, and in the sixth and fourteenth amendment right to counsel. *Wolff v. McDonnell, supra* at 576, 579 (due process clause); *Procunier v. Martinez, supra* at 419 (due process clause); *Cruz v. Beto*, 405 U.S. 319, 321 (1972) (first amendment); *Younger v. Gilmore, supra*, 319 F. Supp. at 109, 111 (due process and equal protection clauses); *Andrade v. Hauck*, 452 F.2d 1071, 1072 (5th Cir. 1971) (first amendment);

Hooks v. Wainwright, 352 F. Supp. 163, 167, 168 (M.D. Fla. 1972) (first amendment, due process and equal protection clauses); Toal, *supra* at 6 (first and sixth amendments and due process clause). "No citizen, regardless of his transgressions, is ever to be legally consigned to the total and unreviewed power of any single branch of government. To make the system work, to maintain the proper checks and the proper balance, no person subject to the power of government can be denied communication with or access to each of the three spheres of governmental authority. This principle serves the highest interest of government, as much as it serves the needs of the individual." *Andrade v. Hauck*, *supra* at 1072.

This Court has long held that applications to a federal court for habeas corpus are included within the constitutional right of access to the courts. *Johnson v. Avery*, *supra* at 485. More recently, the Court held that the right of access to federal courts for lawsuits under the civil rights act, 42 U.S.C. section 1983, is also included. *Wolff v. McDonnell*, *supra* at 579. Undoubtedly, the right also encompasses access to *state courts* to seek similar relief. See *Boddie v. Connecticut*, 401 U.S. 371 (1971); *Cochran v. Kansas*, *supra* at 258; *Banner v. Coughlin*, 517 F.2d 1311, 1320 (7th Cir. 1975) (per Stevens, J.); *Dewitt v. Pail*, 366 F.2d 682, 685 (9th Cir. 1966); *Wilson v. Zahardnick*, 40[illegible] F. Supp. 1195, 1200 (M.D. Ga. 1975); *Hooks v. Wainwright*, 352 F. Supp. 163, 167 (M.D. Fla. 1975); *cf., Ross v. Moffitt*, 417 U.S. 600, 616 (1974).[4] There

[4]This Court and the other federal courts have consistently used the term "access to the courts" referring to the courts generally without qualifying it by reference just to the federal courts.

are also strong arguments that it should extend as far as protecting access to the courts for problems with detainers and for general civil claims not directly related to a prisoner's confinement, such as divorce actions. *Boddie v. Connecticut*, 401 U.S. 371 (1971); see *Meltzer v. G. Buck LeCraw & Co.*, 402 U.S. 954 (1971) (opinion of Black, J.); *Corpus v. Estelle*, 409 F. Supp. 1090, 1097 (S.D. Tex. 1975); *Hooks v. Wainwright*, 352 F. Supp. 163, 167 (M.D. Fla. 1972); but compare, *United States v. Kras*, 409 U.S. 434 (1973); *Souza v. Travisono*, 498 F.2d 1120, 1123-1124 (1st Cir. 1974).

The concept of access to the courts subsumes the right to "access to the instruments needed to vindicate legal rights . . . ." *Roberts v. LaVallee*, 389 U.S. 40, 42 (1967); *Adams v. Carlson*, 488 F.2d 619, 632 (7th Cir. 1973). Thus, the right to access to the law through legal materials or alternative resources is an important aspect of the right to access to the courts. *Younger v. Gilmore*, *supra*, "(A)n inmate's right of access to the court involves a corollary right to obtain some assistance in preparing his communication with the court." *Nolan v. Scafati*, 430 F.2d 548, 551 (1st Cir. 1970); see also, *Procunier v. Martinez*, *supra* at 419 ("This means that inmates must have a reasonable opportunity to seek and receive the assistance of attorneys."). In *Younger v. Gilmore*, the three-judge court took "notice that more than simple 'facts' are needed in order to file an adequate petition for relief by way of habeas corpus" and that legal knowledge or information is also essential. 319 F. Supp. at 110. The District Court found that the same is true in the courts in North Carolina and also in cases other than habeas

corpus (presumably civil rights actions).[5] Supp. App. 4-5, 12; see also, *In re Harrell*, 86 Cal. Rptr. 504, 470 P.2d 640 (1970). "Few trained lawyers could operate with any degree of competence" without legal research materials. ABA Project on Minimum Standards for Criminal Justice, *Standards Relating to Post-Conviction Remedies*, Commentary at 51 (Approved Draft 1968). Prisoners need to know the law and the trends in the law in order to know what facts to allege and what facts are irrelevant and should be omitted so that they do not obscure the material details. Prisoners also need access to the law in order to understand and respond to the pleadings filed by the Attorney General's office in opposition to their actions, which are usually replete with citations to legal materials. Supp. App. 5. "(I)t is necessary to understand what one's rights are before it is possible to set out in a petition the facts which support them." *Johnson v. Avery, supra* at 501 (White, J., dissenting). This is true in the area of criminal law and procedure and in the area of prisoners' rights

[5] This is an area where the opinions of the District Court and Court of Appeals are entitled to great weight because they represent "expressions of essentially practical judgments on questions which those courts must confront" on a regular basis. *United States v. MacCollom*, 96 S. Ct. 2086, 2093 (1976).

Interestingly, respondents Harrington, et al. did not cite *Gilmore* or any cases in their complaint, App. 33-35, and the District Court originally dismissed their case without mentioning *Gilmore* or any of its progeny. Supp. App. 33. By contrast, respondents Smith, et al. and Morgan, et al. did cite *Gilmore* in their complaints. App. 7, 24. That was apparently what was needed to bring that case and the relevant law to the attention of the same District Court Judge, who promptly gave favorable consideration to their cases. Supp. App. 7.

which, with the relatively recent decline of the "hands-off attitude," *Procunier v. Martinez, supra* at 404-405, is a developing field of law. See *Wolff v. McDonnell, supra* at 570, 571-572. Thus, the failure of petitioners to make law books or a reasonable alternative available to their prisoners constitutes "an effective denial of access to the courts." *Knell v. Bensinger*, 489 F.2d 1014, 1017 (7th Cir. 1973).

II.

THIS COURT'S DECISION IN *YOUNGER V. GILMORE* REQUIRES THAT NORTH CAROLINA PROVIDE ITS PRISONERS ADEQUATE LAW BOOKS OR A REASONABLE ALTERNATIVE.

The District Court held that our State's failure to provide its prisoners with law books or a reasonable alternative unconstitutionally interfered with their right of access to the courts. The Court of Appeals agreed. Both relied on this Court's decision in *Younger v. Gilmore, supra. Gilmore* compels the conclusion that they reached.

(A) *The Holding in* Younger v. Gilmore. *Gilmore* involved the California prison system. California did not provide law libraries in its two maximum security prisons, and also arranged for law books in the state library to be made available for prison circulation. It decided to provide law libraries in its other prisons as well. Accordingly, it promulgated a regulation which listed a standard set of law books for each prison. At the same time the Director of the Department of Corrections in a separate Transmittal Letter ordered

that "all existing law books and references in inmate law libraries not consistent with this section are to be removed and destroyed." 319 F. Supp. at 107, n. 2.

Although the contemplated destruction of existing law books was a factor motivating the California inmates to bring suit, the scope of the litigation was broader. The inmates challenged the constitutionality of the regulation limiting the law books to be provided at each institution, and therefore a three-judge court was convened, properly so as this Court held. 404 U.S. at 15. The directive for destruction of existing law books beyond those included in the list was not part of the challenged regulation, but was in an accompanying transmittal letter. The three-judge court pointed out that the subject of the challenge before it was the regulation and that the provision for destroying law books just helped explain the regulation. 319 F. Supp. at 107.

At the time, California permitted its prisoners to help other prisoners in the preparation of legal papers. 319 F. Supp. at 107, n. 1. Compare Brief for Petitioners 5-6, 12. It also permitted prisoners to buy their own law books and other legal materials if able to do so. 319 F. Supp. at 107, n. 1. Presumably, California also expended millions of dollars for the appointment of counsel and other expenses to provide representation for indigent defendants in criminal cases. Compare Brief for Petitioners 3, n. 1. To justify the limited nature of its standard book list California cited a need for economy. 319 F. Supp. at 108. Compare Brief for Petitioners 13. It also argued that "access to the courts' has placed on prison officials only the passive, negative duty of noninterference . . . .". *Younger v. Gilmore*, No. 70-9, Appellant's Brief 19. Compare Brief for Petitioners 5-6, 8-9, 12.

California was in a stronger position in *Gilmore* to argue that it was meeting its prisoners' needs for assistance in preserving their right of access to the courts than North Carolina is. It not only permitted inmate legal assistance and inmate law book purchases, but, without court order, it was also willing to provide law libraries in all of its prisons; it sought only to restrict the number of books that it had to provide in those libraries. When it invoked considerations of economy, it did so not to justify a refusal to provide any law books at all, but simply to justify its decision as to the limits on the size of the legal collection that it would provide. By contrast, petitioners do not want to provide North Carolina prisons with any law books whatsoever, except those few now available at Central Prison.

Nevertheless, the three-judge court required California either to expand its list of law books or "to adopt some new method of satisfying the legal needs of its charges," 319 F. Supp. at 112, and this Court affirmed. The three-judge court observed: "The alternatives open to the State are legion." 319 F. Supp. at 110.

In reaching its result the three-judge court reasoned from the following "basic test":

> "(T)he asserted interest of the State in enforcing its rule is balanced against the claimed right of the prisoner and the degree to which it has been infringed by the challenged rule. Most prison regulations reflect the clear exigencies of a penal situation and the courts are justifiably reluctant to question their wisdom . . . . Other rules, though, touch upon interests of which the judiciary is more solicitous, and the burden of justifying these regulations is especially heavy. . . ."

319 F. Supp. at 109. See also, *id.*, n. 6.[6] The three-judge court emphasized that in order to prevail the prisoners must show that their right to reasonable access to the courts and the right to equal protection was "infringed to such a degree as to render the justifications offered by the State inadequate and unreasonable as a matter of law." 319 F. Supp. at 109; see also, Supp. App. 4, 6. The court then concluded that the prisoners had done so and that the State's asserted need for economy did not justify the restrictions. 319 F. Supp. at 111.

When California appealed to this Court, it did not raise any concern about being prohibited from destroying the law books that it regarded as extras. Instead, it complained only that: "The District Court held that state prison officials are under an affirmative constitutional duty to provide inmates in their charge with either extensive law library facilities or the professional assistance of attorneys or law students." *Younger v. Gilmore*, No. 70-9, Juris. Statement 6, 8, 14; *Younger v. Gilmore*, No. 70-9, Appellant's Brief i, 5, 7, 8, 15, 16, 19, 29. The question presented to this Court, as stated in the Jurisdictional Statement, Rule 15(1)(c), Supreme Court Rules, was:

[6]In *Procunier v. Martinez*, 416 U.S. 396, 420 (1974), this Court used a similar formulation of the test. See also, *Morales v. Schmidt*, 489 F.2d 1335, 1348 (7th Cir. 1973) (Stevens, J., dissenting), on rehearing en banc, 494 F.2d 85 (7th Cir. 1974). *Procunier's* formulation included explicit reference to "the proper regard that judges should give to the expertise and discretionary authority of correctional officials." *Procunier v. Martinez, supra* at 420; see also, *Cruz v. Beto*, 405 U.S. 319, 321 (1972). This was certainly part of the *Gilmore* statement of the test. For a discussion of the proper regard given to these factors by the lower courts in this case, see Argument V, *infra*.

> "Does a state have an affirmative federal constitutional duty to furnish prison inmates with extensive law libraries or, alternatively, to provide inmates with professional or quasi-professional legal assistance?"

Younger v. Gilmore, No. 70-9 Juris. Statement 5.

This Court unanimously affirmed the affirmative answer to that question given by the three-judge court. 404 U.S. 15. Although the opinion was brief and rendered per curiam, it was not decided summarily. Rather it followed full briefing and oral argument which gave thorough exposition to the issues. Even if *Gilmore* had been decided summarily, it would stand as a holding of this Court that states have an affirmative constitutional duty to furnish prison inmates with reasonable law libraries or an adequate alternative. *McCarthy v. Philadelphia Civil Service Commission*, 96 S. Ct. 1154, 1154 (1976); *Hicks v. Miranda*, 422 U.S. 332, 344 (1975); *cf., Usery v. Turner Elkhorn Mining Co.*, 44 U.S.L. Week 5181, 5185 (1976); *Massachusetts Board of Retirement v. Murgia*, 44 U.S.L. Week 5077, 5078, n. 1 (1976) (summary affirmance after only "cursory consideration" does not "foreclose this opportunity to consider more fully that question."); *Edelman v. Jordan*, 415 U.S. 651, 670-71 (1974). Because it was decided after full briefing and argument, its precendential value is strong. See *Imbler v. Pachtman*, 96 S. Ct. 984, 991 (1976). This Court has cited it favorably and relied on it in at least three cases. *Wolff v. McDonnell, supra* at 578; *Cruz v. Beto*, 405 U.S. 319, 321 (1972); *Cruz v. Hauck*, 404 U.S. 59 (1971); see also, *Chaffin v. Stynchcombe*, 412 U.S. 17, 34, n. 22 (1973). Although the Court did not expressly adopt the opinion of the three-judge court, neither did it

disclaim that opinion. *Cf., East Carroll Parish School Board v. Marshall,* 96 S. Ct. 1083, 1085 (1976). Thus, the holding of *Gilmore* is clear and its foundation in the reasoning of the three-judge court is firm.

Gilmore is an important development in the general body of law in which the federal courts have become increasingly willing "to take cognizance of valid constitutional claims" of state as well as federal prisoners, and to "discharge their duty to protect constitutional rights." *Procunier v. Martinez, supra* at 405; *Cruz v. Beto, supra* at 321. More specifically, it is part of a line of cases which serve that body of law as a beacon, facilitating voyages through its depths and lighting its shoals to permit safe passage. In that context, it stands not as a terminal decision but as one layer of an edifice under cautious but continuous construction. Its contribution to the structure was quietly heralded for years and it has been widely acclaimed since its appearance.

Twenty-five years ago, in *Ex Parte Hull, supra,* this Court embarked upon a dialogue with the states about their responsibilities in connection with the needs of their prisoners to bring grievances about their convictions and the conditions of their confinement to the attention of the courts in petitioning for their redress. Much of the initiative for raising constitutional questions in criminal procedure and most of the initiative for informing the courts about prison, parole and other penal conditions has rested with the inmates of our prisons. In *Ex Parte Hull,* this Court reminded prison authorities that the courts have a legitimate interest in those matters and declared the importance of permitting prisoners to shine the light of their understanding on the abuses that they perceive in their

own conditions. Thereafter in official and unofficial statements, in subdued and careful steps, the Court asked the states to cooperate with their prisoners in measures which would prove to be good correctional policy as well as good constitutional doctrine. See ABA Resource Center on Correctional Law and Legal Services, "Providing Legal Services to Prisoners," 8 Ga. L. Rev. 363, 364 (1974). Mr. Justice Stewart in a 1960 address to the annual meeting of the Legal Aid Society said:

> "(I)t would be of untold advantage if a way could be found to provide legal assistance at the large state and federal penitentiaries throughout the country from which most of these [*in forma pauperis*] petitions come. Our Court, and all the federal and state courts to which *in forma pauperis* appeals are directed, would be greatly aided in their work if such legal assistance could be provided. A lawyer's help would insure that meritorious claims were properly and clearly presented, and that frivolous or irrelevant contentions were eliminated."

Stewart, "The Indigent Defendant and the Supreme Court of the United States," 58 Legal Aid Review 3, 7 (1960); see also, *Houghton v. Shafer,* 392 U.S. 639 (1968); *Cochran v. Kansas, supra.*

In 1963 a committee of the Judicial Conference of the United States recommended legislation to provide legal assistance for federal and state prisoners. Report of the Committee on Habeas Corpus, 33 F.R.D. 367, 385 (1963).

In *Johnson v. Avery, supra,* the Court struck down as a denial of the constitutional right to access to the courts a Tennessee prison regulation prohibiting prisoners from helping other prisoners with the preparation of

judicial papers. The Court held that "the prisoner is, in effect, denied access to the courts unless such help is available." *Id.* at 488. Confining its decision to the facts presented to it, the Court ruled simply that the prison could not punish its inmates for violating that regulation. The Court made the breadth of its concern clear, however. It stated that prisoners are constitutionally entitled to help with their applications to the courts. Acknowledging that inmate legal assistance may be a source of problems for the prisons and for the courts, the Court also told the states "that techniques are available to provide alternatives if the State elects to prohibit mutual assistance among inmates." *Id.* at 490. The Court described some of the available techniques: attorneys on the public defender staff could include consultation with prisoners on their legal claims among their services; law students could advise inmates; and voluntary bar association programs could provide attorneys to consult with prisoners concerning their cases. *Id.* at 489.

In an opinion dissenting from the judgment upsetting the discipline of the prison writ writer, Mr. Justice White more directly stated "that the State must provide access to the courts by ensuring that those who cannot help themselves have reasonably adequate assistance in preparing their post-conviction papers." *Id.* at 502. Unless the inmate gets such help, Mr. Justice White observed, the prisoner "will be as surely and effectively barred from the courts as if he were accorded no help at all." *Id.* at 499.

Gilmore can be read consistently with either the narrow basis for *Johnson v. Avery* – that the obligation of the state is limited to overcoming its own hindrance of its prisoners' access to law books in libraries outside

the prison system – or with Mr. Justice White's view, also supported in the majority opinion, 393 U.S. at 488; see also *Wolff v. McDonnell, supra* at 577 – that without regard to whether the State is a source of interference with its prisoners' access to the courts, the prisoners have a "constitutional right to help." 393 U.S. at 502; see also, *Nolan v. Scafati,* 430 F.2d 548, 551 (1st Cir. 1970); *Cross v. Powers,* 328 F. Supp. 899, 903 (W.D. Wis. 1971). Either interpretation supports the judgment of the District Court affirmed by the Court of Appeals in this case.

(B) Younger v. Gilmore *Deserves To Be Reaffirmed By This Court.* In their certiorari petition, petitioners argued "that the only conclusion which can be drawn from the YOUNGER *per curiam* is purely negative, that a state cannot by regulation restrict the contents of prison law libraries." Petition for Certiorari 4. The foregoing discussion makes plain that such a narrow interpretation cannot be maintained. See *Wolff v. McDonnell, supra* at 578-579 (*Gilmore* "required state officials to provide indigent inmates with access to a reasonably adequate law library for preparation of legal actions.") Accordingly, in their brief petitioners prudently abandoned that position and instead called for a "fresh evaluation" of *Gilmore* to determine "whether the rule in that case should be applied to every prison in the nation or overruled as a mistake." Brief for Petitioners 11.

Such reevaluation would not be appropriate. *Gilmore* was decided unanimously after plenary consideration less than five years ago. Although the Court consisted of only seven Justices at the time, six of the Justices who joined in that decision still sit as Members of this Court.

Moreover, the developments since *Gilmore* – in the states and their prison systems, in the courts, in the literature, and in professional organizations – demonstrate the wisdom and correctness of that decision. The support for it from all quarters is overwhelming. North Carolina has little company in resisting it.

The record of compliance with *Gilmore* among the states, the Federal Government and the District of Columbia, is nearly complete, and is described in Exhibit B to this brief. West Publishing Company reported that soon after *Gilmore* was decided all but ten states had placed orders to meet its requirement. Ziegler and Herman, "The Invisible Litigant: An Inside View of Pro Se Actions in the Federal Courts," 47 N.Y.U. L. Rev. 157, 174, n. 56 (1972); see also, Werner, "The Present Legal Status and Conditions of Prison Law Libraries," 66 Law Lib. J. 259, 262, 264-266 (1973). As *Gilmore* contemplated, the modes of response have ranged from law libraries to trained inmate paralegal assistance programs to law school clinical programs to attorney legal services programs, and have included a variety of combinations of all of these. Exhibit B is a catalogue of the forms of legal assistance provided by nearly all of the states for their prisoners. The states' record of compliance with *Gilmore* which it shows argues forcefully against reevaluation of *Gilmore*. The effect of *Gilmore* has been to guarantee substantial legal assistance to the prisoners throughout most of the country. Only a handful of states would benefit from the overruling of *Gilmore* recommended by petitioners. If conferred, any such benefit would be a windfall reward for recalcitrance in abiding by the decisions of this Court. The effect on

the several states which have complied with *Gilmore* is hard to predict. Most have reported such satisfaction with their programs that they would likely continue them even without constitutional compulsion from this Court. What would it mean in the others? Some even though proud of their programs might feel discouraged if the Court were to reverse the decision in this case. They might then neglect their well maintained law libraries until the lack of up-to-date materials renders them largely useless or, worse, misleading to the prisoners. Others might neglect their paralegal training of inmates. Others might let their law student or lawyer legal service programs lapse. What reasons do petitioners offer for asking the Court to give possible encouragement to such results?

Gilmore has received the support of all the circuits which have had occasion to deal with it: the First Circuit, in *Souza v. Travisono*, 498 F.2d 1120 (1st Cir. 1974); the Third Circuit, in *Bryan v. Werner*, 516 F.2d 233 (3d Cir. 1975); the Fourth Circuit, in this case, and in *Vette v. Virginia Department of Corrections*, 529 F.2d 518 (4th Cir. 1976) (unpublished opinion); *Jarvis v. North Carolina*, No. 73-2094 (4th Cir. 1974) (unpublished memorandum decision); the Fifth Circuit, in *Stevenson v. Reed*, 530 F.2d 1207 (5th Cir. 1976), affirming 391 F. Supp. 1375 (N.D. Miss. 1975); *Cruz v. Hauck*, 515 F.2d 322 (5th Cir. 1975); *Hooks v. Wainwright*, 457 F.2d 502 (5th Cir. 1972); *Novak v. Beto*, 453 F.2d 661 (5th Cir. 1971); the Seventh Circuit, in *Knell v. Bensinger*, 522 F.2d 720, 726 (7th Cir. 1975), after prior decision at 489 F.2d 1014 (7th Cir. 1973); *Black v. Brown*, 513 F.2d 652 (7th Cir. 1975); *Adams v. Carlson*, 488 F.2d 619, 632 (7th Cir. 1973); the Eighth Circuit, in *Kirby v. Ciccone*, 491

F.2d 1310 (8th Cir. 1974); *Noorlander v. Ciccone*, 489 F.2d 642 (8th Cir. 1973); the Ninth Circuit, in *Gaglie v. Ulibarri*, 507 F.2d 721 (9th Cir. 1974); *Mead v. Parker*, 464 F.2d 1108 (9th Cir. 1972); the Tenth Circuit, no cases, but see the District Court decision in *Battle v. Anderson*, 376 F. Supp. 402 (E.D. Okla. 1974); and the District of Columbia Circuit, in *United States v. Simpson*, 436 F.2d 162 (D.C. Cir. 1970).[7] The

[7]Petitioners cite only two cases *contra*: *Hatfield v. Bailleaux*, 290 F.2d 632 (9th Cir. 1961); *Farrington v. North Carolina*, 391 F. Supp. 714 (M.D. N.C. 1975).

In *Farrington*, the District Court observed: "The appointment of counsel to advise with prisoners and prepare and file meritorious actions would be far more beneficial than providing them with law libraries." 391 F. Supp. at 720. Then, interpreting *Gilmore* exceedingly narrowly, it held that North Carolina need not establish prison law libraries because "(i)t has not embarked upon the hazardous task of furnishing 'adequate' law libraries, with 'adequate' access, 'adequate' circulation, and with 'adequate replacement procedures.'" 391 F. Supp. at 720. That is the only federal case expressing disapproval of *Gilmore*, and it directed its criticism only at law libraries while expressing approval of legal assistance programs. To the extent that it refused to require North Carolina to provide at least law libraries in its prisons, it was effectively overruled by the Court of Appeals decision in this case.

Hatfield was decided ten years before *Gilmore*. It recognized the constitutional right of access to the courts and that this right included access to the state courts, 290 F.2d at 636, but it upheld prohibitions against inmate legal assistance for other inmates, and to that extent was overruled in *Johnson v. Avery*, *supra*. It also held that a state could deny prisoners all access to the courts or to legal material while in disciplinary isolation for periods of time ranging from two to twenty-seven days, and could limit the time that prisoners could spend in the law library and prohibit them from keeping legal materials in their cell. See *Johnson v. Avery*, *supra* at 490. In dictum, the court observed:

(continued)

federal courts have found satisfaction in the improved quality of petitions prepared by attorneys and inmate paralegals. *McDonnell v. Wolff*, 342 F. Supp. 616, 621 (D. Neb. 1972); *Novak v. Beto*, 320 F. Supp. 1206, 1210 (S.D. Tex. 1970); Jacob and Sharma, "Justice After Trial: Prisoners' Need for Legal Services in the Criminal- Correctional Process," 18 Kan. L. Rev. 493, 593 (1970). There is evidence that giving prisoners access to law libraries or legal services reduces the number of frivolous petitions and increases the quality of those petitions that are filed. Consortium of States to Furnish Legal Counsel to Prisoners, "Final Report, LEAA Grant 75 OF-99-0013" 14 (1975); Jacob and Sharma, *supra*, 18 Kan. L. Rev. at 520-521, 602; LeDonne, *Survey of Library and Information Problems in Correctional Institutions* (H.E.W. Office of Education 1974), vol. 2 at 11; Meyer, "The Defender Project," The KU Laws 5, 9 (Fall 1973); Norman, "Civil Legal Services to Prison Inmates," 48 Fla. B.J. 736, 738 (1974); Wilson, "Legal Assistance Project at Leavenworth," 24 Legal Aid Brief Case 254, 259 (1966); Note, 1968 Duke L.J. 343, 359.

(footnote continued from preceding page)

"State authorities have no obligation under the federal Constitution to provide library facilities and an opportunity for their use to enable an inmate to search for legal loopholes in the judgment and sentence under which he is held . . . ." 290 F.2d at 640. (The case may have involved prisoners who wanted access to legal materials for cases in which they had been offered and waived counsel. See 290 F.2d at 641.) This dictum was expressly rejected by the three-judge court in *Gilmore*. California continued to urge that dictum before this Court, *Younger v. Gilmore*, No. 70-9, Appellant's Brief 17, but without success. Ninth Circuit law is now, of course, inconsistent with that dictum. *Gaglie v. Ulibarri*, 507 F.2d 721 (9th Cir. 1974).

Professional organizations of lawyers, librarians and correctional administrators and other concerned groups reacted quickly to support *Gilmore* and to assist in its implementation. Although most, like the lower courts in this case, prefer that a state provide both legal services and law libraries than one or the other, and prefer legal services over law libraries, they strongly support the need for prison law libraries at a minimum. *Gilmore* spurred the American Library Association to form a Task Force on Prison Library Service. LeDonne, *supra*, vol. 1 at 1-2. The American Association of Law Libraries established a committee to prepare a recommended list of the contents of a prison legal collection, to make recommendations to individual states, and to compile a directory of law libraries which provide services to prisoners. LeDonne, *supra*, vol. 2 at 5.

The American Correctional Association (ACA) also created a Subcommittee on Legal Reference Materials. LeDonne, *supra*, vol. 2 at 5. It proposed a conference on the subject which was held in May, 1972. LeDonne, *supra*, vol. 1 at 2; 36; vol. 2 at 2, 5. Out of this conference came the *Guidelines for Legal Reference Service in Correctional Institutions: A Tool for Correctional Administrators*, which was formally approved by the ACA in 1972 and published in 1973. LeDonne, *supra*, vol. 2 at 5. A second edition was published in 1975. The ACA has also adopted library standards for prisons which provide that, because legal counseling is not available in an adequate supply, law libraries are essential in prisons. ACA Committee on Institution Libraries, *Library Standards for Adult Correctional Institutions* 10-13 (1974). Individual correctional administrators have also expressed their approval. Bluth, "Legal Services for Inmates: Coopting

the Jailhouse Lawyer," 1 Capital U.L. Rev. 59, 61, 67 (1972); Cardarelli and Finkelstein, "Correctional Administrators Assess the Adequacy and Impact of Prison Legal Services Programs in the United States," 65 J. Crim. L. and Criminology 91, 94-102 (1974); Connecticut Department of Correction, *Legal Assistance to Prisoners* 4-5; Kansas Legal Service for Prisoners, Inc., *The Facts About Legal Services for Prisoners* (1975 Report); Walsh, "Jailhouse Lawyers: The Texas Department of Corrections Revokes Their License," 1 Capital U.L. Rev. 41, 56 (1972); *Carter v. Lally*, Civil No. 72-642-K (D. Md.), Affidavit of William P. Statsky at 3 ("I conducted an extensive survey of prisons in America which offered legal services to fellow inmates. My contact with wardens and other administrators revealed substantial support for the concept of inmate as paralegal not only as a way of providing services but also as preparation for a new career in law once released."); see generally, Carlson, "Corrections in the United States Today: A Balance Has Been Struck," 13 Am. Crim. L. Rev. 615, 635-639, 646-647 (1976).

Also, "West Publishing Company prepared recommended lists of materials for each state and agreed to provide training sessions in the use of the packaged collections." LeDonne, *supra*, vol. 2 at 6. The American Association of Law Libraries, through its Committee on Law Library Service to Prisoners, has embarked on a long-range program "for one or more consulting law librarians in each state to act as continuing consultants to librarians in prison law libraries of the state." Werner, *Manual for Prison Law Librarians* 5 (Fred B. Rothman and Co. 1976). Mr. Werner's recently published book for the American Association of Law Libraries is itself a service for prison law librarians.

The United States Government has also lined up squarely behind *Gilmore*. In an amicus curiae brief filed in the still pending case of *Hooks v. Wainwright*, Nos. 71-1011-Civ-J-S, 71-144-Civ-J-S (M.D. Fla.) after the interim decision in that case published in 352 F. Supp. 163 (M.D. Fla. 1972), the Government took the position that "meaningful access to the courts for indigent inmates of the Florida penal system requires both reasonably comprehensive prison law libraries and adequate legal services." *Hooks v. Wainwright, supra,* Post Hearing Memorandum of the United States 6. The Government made clear that it believed that even if legal services are provided, "reasonably comprehensive law libraries must also be provided." *Id.* at 15. The United States Bureau of Prisons provides law libraries in all of its prisons, Policy Statement 2001.2B, 1 Pris. L. Rptr. 243-245 (1972) and legal services programs in most. *United States v. Simpson,* 436 F.2d 162, 168-169 (D.C. Cir. 1970); *Stevenson v. Reed,* 530 F.2d 1207 (5th Cir. 1976), Affidavit of Eugene N. Burkin, General Counsel of the United States Bureau of Prisons, dated December 20, 1973, R. Vol. 1, 137-138.

This position is consistent with the position taken by two national commissions, one in 1967 and the other in 1973. President's Commission on Law Enforcement and the Administration of Justice, *Task Force Report: Corrections* 84 (1967); National Advisory Commission on Criminal Justice Standards and Goals, *Report on Corrections* 26-30 (1973). The National Advisory Commission was established by the Law Enforcement Assistance Administration (LEAA) and the standards it promulgated provide for law libraries in all prison facilities with a design capacity of 100 or more (standard 2.3) and also for legal assistance for prisoners

by attorneys assisted by law students or paraprofessionals (standard 2.2). LEAA has invested substantial sums of money in the states to back up those recommendations. See Exhibit B. LEAA has found that "The need for prison legal services is confirmed in the literature, in the results of our own empirical research, and in the views of a national sample of correctional personnel and law schools." Finkelstein and Krantz, *Perspectives on Prison Legal Services: Needs, Impact and the Potential for Law School Involvement* 1 (LEAA Summary Report 1972).

The American Bar Association (ABA) has also given enthusiastic support to *Gilmore*. Even before *Gilmore* was decided the ABA took a position in favor of the states providing prisoners a law library, counselling by lawyers or law students, and specifically-prepared pamphlets or brochures outlining the relevant law in a manner understandable to the prison population. ABA Project on Minimum Standards for Criminal Justice, *Standards Relating to Post-Conviction Remedies* 49-52 (Approved Draft 1968) (standard 3.1); see also, ABA Project on Minimum Standards for Criminal Justice, *Standards Relating to Providing Defense Services* 40-43 (Approved Draft 1968) (standard 4.2). Inspired by Mr. Chief Justice Burger, see ABA Young Lawyers Section, *Behind the Bars: A Report to the Chief Justice of the United States Supreme Court* (1975), the ABA is strengthening its support. Its Joint Committee on the Legal Status of Prisoners has adopted a tentative draft of standards concerning the situation of those confined as a result of criminal justice system processing. Tentative standards 2.1, 2.2 and 2.3 deal with the general subject of "Access to the Courts, Legal Services

and Legal Materials." Following closely the recommendations of the National Advisory Commission, the new proposed standards call for states to provide law libraries in their prisons and also to provide legal assistance programs for their prisoners staffed by attorneys or trained paraprofessionals under the supervision of an attorney. The ABA has also supported its position financially. Its Commission on Correctional Facilities and Services in 1972 created the Resource Center on Correctional Law and Legal Services and in 1974 created a program called Bar Association Support to improve Correctional Service (BASICS). Through the BASICS program, the ABA provides funds to state and local bar associations for several programs, among which prison legal services programs are one of three priority areas. Grants for this purpose have been provided to several bar associations. ABA, *BASICS* (1976); ABA, *BASICS* II (1975). See generally, ABA Resource Center on Correctional Law and Legal Services, "Providing Legal Services to Prisoners," 8 Ga. L. Rev. 363, 374, 375, 422 (1974).

Similar support has come from other organizations. See Annual Chief Justice Earl Warren Conference on Advocacy in the United States, "A Program For Prison Reform; the Final Report" 15, Recommendation XVI (The Roscoe-Pound-American Trial Lawyers Foundation 1972); Krantz, Bell, Brant and Magruder, *Model Rules and Regulations on Prisoners' Rights and Responsibilities* 207-209 (West 1973); National Commission on Uniform State Laws, *Uniform Corrections Act* §2-601 (Proposed Code).

III.

NORTH CAROLINA DOES NOT PROVIDE ITS PRISONERS LAW BOOKS OR A REASONABLE ALTERNATIVE.

North Carolina does nothing to help its prisoners overcome the obstacles which incarceration imposes on their access to the courts. The District Court so found. Supp. App. 6, 10-11. The Court of Appeals agreed. Petition for Certiorari 19. Petitioners nevertheless contend that North Carolina does provide alternatives to law libraries for their prisoners in the following forms: (a) it provides counsel to represent indigent defendants at trial and on their first appeal, Brief for Petitioners 3, n. 1, 8, 22; (b) it provides counsel to represent indigent prisoners in state post-conviction proceedings, Brief for Petitioners 14, n. 9; and (c) it provides an Inmate Grievance Commission, Brief for Petitioners 14.

Point (a). The right of criminal defendants to the assistance of counsel in trials and first stage appeals has been developed in a distinct line of cases, *Argersinger v. Hamlin*, 407 U.S. 25 (1972); *Douglas v. California*, 372 U.S. 353 (1963); *Gideon v. Wainwright*, 372 U.S. 335 (1963), and the courts have customarily used the phrase "access to the courts" in a narrow sense which does not include these situations. Only the needs of prisoners for access to the courts after their conviction and first appeal are involved in this case. For this reason, the State's expenditures for appointed counsel are not relevant. They are total expenditures for appointment of counsel generally and not for assistance to prisoners in proceedings which are part of the specific concept of access to the courts which is involved in this case.

Point (b). This Court has already taken notice that North Carolina's statutory provisions for appointed counsel are not construed as broadly as they appear on their face. *Ross v. Moffitt*, 417 U.S. 600, 614 (1974). As is generally the case with such statutes in post-conviction proceedings, the court appoints counsel only after first making an initial screening determination, according to uncertain criteria, that such appointment is justified in the particular case. Supp. App. 23; Exhibit A at 4; *Perkins v. North Carolina*, 234 F. Supp. 333, 334-335 (W.D. N.C. 1964); Jacob and Sharma, *supra*, 18 Kan. L. Rev. at 518; see also, *Johnson v. Avery*, *supra* at 488 (1969). Before a prisoner can take advantage of this statute, then, he or she must present to the court a case sufficiently compelling in its initial documentary appearance to overcome this hurdle. The right to access to the courts comes into play primarily at this preparation stage, *Wolff v. McDonnell*, *supra* at 576 (1974), and at this critical time North Carolina provides its prisoners with no assistance. *Cf.*, *Johnson v. Avery*, *supra* at 487, n. 6.

Point (c). Our Inmate Grievance Commission, while a welcome resource, see Burger, "Our Options Are Limited," 18 Vil. L. Rev. 165, 171 (1972), can help prisoners, if at all, only with grievances against the institution and not challenges to their convictions. Even in that area it is limited to making recommendations to the Secretary of Correction, and cannot assist inmates with the preparation of court papers to gain access to the courts. Moreover, the Commission has the authority only to make recommendations, not decisions. By statute, the final decision on any grievance remains with the Secretary of Correction who "shall affirm the order of the Commission, or shall reverse or modify the order

if he disagrees with the findings and conclusions of the Commission." N.C. Gen. Stat. §148-106(2)(1975 Supp.). The Department of Correction need not, therefore, pay any attention to the Inmate Grievance Commission, and the Secretary has in fact rejected most of the Commission's orders. Conclusions about the effectiveness of the Commission depend upon information about its receptivity to grievances and about the Department's willingness to abide by or even be guided by Commission recommendations. Petitioners have provided no such information.

Thus, North Carolina provides its prisoners no legal assistance in the preparation of state or federal collateral attacks on their convictions, in the preparation or pursuit of state or federal actions challenging the conditions of their confinement, or in the resolution of detainers filed against them, or any other matters.

Petitioners argue that the fact that some of the respondents have filed many court actions shows that petitioners "have not deprived the Respondents of their access to the Courts." Brief for Petitioners 8. That information might be relevant if respondents were charging that petitioners had prevented them from communicating with the courts in the manner outlawed in *Ex parte Hull*, 312 U.S. 546 (1941). But, as the District Court held, "Access does not mean the ability to file petitions or suits, but it rather means the ability to file *meaningful* petitions and suits." Supp. App. 5. "(A)ccess to the courts by prison inmates must be more than mechanical access; it must be meaningful access." Brief of the Commonwealth of Virginia as Amicus Curiae in Support of the Petitioners 6.

As petitioners assert, "the North Carolina Department of Correction has no regulations prohibiting mutual legal assistance . . . ." Brief for Petitioners 3, 6, 9. That does not mean, however, that inmates capable of providing such assistance and willing to do so are available to the prisoners at each of the State's prison units. *Cf., Bryan v. Werner*, 516 F.2d 233, 236-237 (3d Cir. 1975); *Stevenson v. Reed*, 391 F. Supp. 1375, 1378 (N.D. Miss. 1975), aff'd, 530 F.2d 1207 (5th Cir. 1976). It also does not mean that the State takes any steps to encourage or facilitate such assistance or to assure that such help is accessible to every inmate who needs it. There is irony in petitioners' contending that by tolerating inmate legal assistance they satisfy their constitutional obligation while also maintaining that their inmates are "untrained individuals with neither an understanding nor respect for the law . . . ." Brief for Petitioners 22. Not even the most accomplished writ writer, no more than a skilled attorney, could be expected to function properly without legal research materials. Moreover, the fact that there is no regulation against prisoners providing such assistance does not mean that prison administrators do not take discretionary steps such as administrative transfers to discourage it. See *Oxendine v. Williams*, 509 F.2d 1405, 1407 (4th Cir. 1975); *Jarvis v. North Carolina*, No. 73-2094 (4th Cir. 1974) (unpublished memorandum decision), slip opinion at 4.

In their certiorari petition, petitioners argued that "legal assistance is also made available to inmates through the various legal aid societies of the State of North Carolina, the North Carolina Civil Liberties Union, the Prison Research Counsel, Law School Habeas Corpus and Constitutional Law Seminars,

various voluntary associations of attorneys and law students . . . ." Petition for Certiorari 11. This assertion was false and without support in the record. Wisely, petitioners abandoned it in their brief.

Thus, the findings of the courts below that North Carolina provides its prisoners with no legal assistance in the preparation of their court actions are not "clearly erroneous." Rule 52(a), Federal Rules of Civil Procedure. In this respect our State can be counted among only a handful of states that have ignored this constitutional responsibility. Unlike the overwhelming majority of states, North Carolina provides its prisoners no legal services beyond trial and the first appeal (unless a state court judge decides to appoint counsel for a prisoner who has filed a post-conviction petition), no programs for law students or other legal paraprofessionals to assist its inmates, no training or education in legal matters for any of its inmates and no law books in seventy-nine of its prison units and only a few in its maximum security unit. North Carolina has refused to provide any such assistance in spite of this Court's decision in *Younger v. Gilmore, supra*, and the Court of Appeals decision in *Jarvis v. North Carolina*, No. 73-2094 (4th Cir. 1974) (unpublished memorandum decision) (holding that a North Carolina prisoner's allegation that he is provided no law books "states a claim for relief if the prison system offers no adequate alternative.").

IV.

NORTH CAROLINA HAS OFFERED NO SATISFACTORY JUSTIFICATION FOR ITS FAILURE TO COMPLY WITH *YOUNGER V. GILMORE* BY PROVIDING ITS PRISONERS ADEQUATE LAW BOOKS OR A REASONABLE ALTERNATIVE.

Petitioners offer only one justification for their failure to comply with *Gilmore:* that the cost would divert scarce funds from what the North Carolina General Assembly and the Department of Correction "no doubt consider more valuable programs." Brief for Petitioners 13. This generalized justification was explicitly rejected in *Gilmore.* See also, *Hooks v. Wainwright,* 352 F. Supp. 163, 168 (M.D. Fla. 1972). It deserves no greater consideration in this case.

Many decisions of this Court proclaim the principle that "constitutional requirements are not, in this day, to be measured or limited by dollar considerations . . . ." *Jackson v. Bishop,* 404 F.2d 571, 580 (8th Cir. 1968) (per Blackmun, J.). *E.g. James v. Strange,* 407 U.S. 128, 141-142 (1972); *Argersinger v. Hamlin, supra* at 37; *Boddie v. Connecticut, supra* at 381-382; *Williams v. Oklahoma City,* 395 U.S. 458 (1969); *Gardner v. California,* 393 U.S. 367 (1969); *Roberts v. LaVallee, supra* at 42; *Long v. District Court,* 385 U.S. 192, 194 (1966); *Douglas v. California, supra*; *Smith v. Bennett,* 365 U.S. 708, 709 (1961); *Burns v. Ohio,* 360 U.S. 252 (1959); *Griffin v. Illinois,* 351 U.S. 12 (1956). This Court has permitted a state to take economic considerations into account only after the Court first found that the state was not constitutionally required to provide the benefit involved. *Ross v. Moffitt, supra*

at 618; see also, *United States v. MacCollom,* 96 S. Ct. 2086 (1976); *Argersinger v. Hamlin, supra* at 62 (Powell, J., concurring). "Where state institutions have been operating under unconstitutional conditions and practices, the defenses of fund shortage . . . have been rejected by the federal courts." *Gates v. Collier,* 501 F.2d 1291, 1319, 1320 (5th Cir. 1974). "(A) state is not at liberty to afford its citizens only those constitutional rights which fit comfortably within its budget." *Pugh v. Locke,* 18 Cr. L. Rptr. 2370, 2371 (M.D. Ala. 1976).

If there may be a situation in which the economic condition of the state treasury and the competing demands for its resources are to be taken into account, it is not presented in this case. Petitioners are not asking the Court to take account of its limited resources in determining the *extent* to which it must provide its prisoners with law books or an alternative form of assistance in their access to the courts. Instead, they are asking the Court – for this economic reason alone – to permit them to do *nothing* in this regard. Moreover, they do so with only a cursory conclusion that "the State's resources, especially at the present time, are sharply limited . . . ." Brief for Petitioners 13. They have presented no information about either the costs involved in their plan for providing law library facilities in their prisons, the resources available to meet those costs, or the competing programs which they consider more valuable.[8] Petitioners have failed to make a case that the law libraries contemplated by their plan are beyond their means. Simply by stating that they

[8] In the Conclusion to their brief, petitioners assert that our State "has not yet found itself financially able to provide such extensive legal research facilities" to its judges or district attorneys. Brief for Petitioners 22. If it is true that the judges do not have access to the laws and decisions, the prisoners' need for

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cannot afford to meet their constitutional obligation they hope to be excused by this Court from doing so.

Constitutional rights would be ephemeral indeed if they depended on a state's subjective budgetary assessments. If financial considerations are ever to play a role in the determination of the existence of constitutional rights or the extent of a state's duty to provide for them, surely this Court as the guarantor of those rights must independently review the state's budgetary determinations. Such a review in this case would involve a multitude of factors.

First, the Court would have to assess the costs involved. Keeping in mind that the District Court permitted the State to determine which of the variety of alternatives available to satisfy the need of its prisoners for help in their access to the courts it would implement, the Court should also inquire whether any of the alternatives not chosen would be less expensive. Although petitioners have not provided any cost figures,[9] it is apparent that the plan that they

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law books is even more acute because the judges are then dependent upon the litigants before them to instruct them on the law. But the judges and district attorneys do have libraries provided them—partly through LEAA grants, Petition for Certiorari 10-11—and also have access to the more complete libraries listed in footnote 1.

[9]In 1974, the Department of Correction prepared an application to LEAA for federal financial support for the implementation of its plan for prison law libraries approved by the District Court. A copy of that application is attached to this brief as Exhibit A. In it, the Department of Correction represented that the total cost for initial purchase of the law library facilities contemplated by the plan—including a librarian, training, travel, supplies, equipment and books would be $72,265. Exhibit A at 10. The figures for books alone were $4,082.42 for each of the seven main libraries and $276.50 for each of the five core libraries, or a total for books of $29,959.44. Exhibit A at Attachments D-1 and D-2.

submitted to the District Court was an economic compromise. They chose not to provide their prisoners with the assistance of lawyers or non-inmate legal paraprofessionals. Instead, they chose to provide only law books, and they decided not to provide those at all of their facilities but only at a select few of them to be located presumably where they can efficiently service the prisoners in the rest. Thus, costs were kept to a minimum, and the lower courts approved the plan with minor modifications. There are ways in which even this cost could be reduced. For example, the Connecticut Department of Corrections has provided so much of the material in its law libraries as is in the public domain on microfilm. Connecticut Department of Corrections, *Legal Assistance to Prisoners* 5-8 (1975). It has found that for approximately $1,000, including the microfilm reader and 39 film cartridges with a total of 150,000 pages, "a single institution can be outfitted with a fairly comprehensive set of legal, statutory and case law, plus related materials." *Id.* at 6, 8. A system using microfilm or microfiche has advantages not only of cost but also of space-saving and security. *Id.* at 6; see also, ABA Young Lawyers Section, *Behind the Bars; A Report to the Chief Justice of the United States Supreme Court* 15 (1975); LeDonne, *supra*, vol. 1 at 37, vol. 2 at 7-8, 10. It is clear that the cost to the State of meeting this constitutional obligation is not exorbitant.

Turning to the resources available to the State to meet these costs, petitioners neglected to mention that they contemplate using federal LEAA funds to pay ninety percent of their initial investment in the library facilities, ninety percent of their expenses for the first year, and a portion of the substantially reduced expenses for the following year. See Exhibit A.

Pursuant to 42 U.S.C. sections 3750 et seq., LEAA has provided substantial funding for most of the states to install law libraries or legal services programs in their prisons. LEAA, *A Compendium of Selected Criminal Justice Projects* III-201, IV-360 to IV-368 (1975); Le Donne, *supra,* vol. 2 at 59, vol. 3 at 5, 6, 10, 18, 29, 39, 42, 65; ABA Resource Center on Correctional Law and Legal Services, "Providing Legal Services to Prisoners," 8 Ga. L. Rev. 363, 401-402, 403, n. 126, 407 (1974); see Exhibit B. The Public Library Services and Construction Act also provides federal funds for library services in state institutions such as prisons. 20 U.S.C. §351, 351(a)(9), et seq.; see LeDonne, *supra,* vol. 1 at 2, 11, vol. 3 at 15, 16, 24. In addition, private funding sources such as the Ford Foundation's Council on Legal Education for Professional Responsibility, Inc. (CLEPR) have helped finance law school clinics providing assistance to prisoners. See CLEPR, *Survey and Directory of Clinical Legal Education* 58-74 (1976).

Petitioners' argument that they lack the funds to do their constitutional duty, if tenable at all, is untenable in light of the LEAA and other outside money that has been made available for this purpose and their own plans to take advantage of it. *Gates v. Collier,* 501 F.2d 1291, 1230 (5th Cir. 1974). Even if they had to rely exclusively on the State's own resources, however, and if the Court were inclined to give any credence to their contention that it could not afford to provide for its prisoners' constitutional needs, the Court would have to evaluate the budgetary considerations asserted by the State. These are matters that the Court should not, in respondents' view, have to study but it is hard to see how the Court could avoid this responsibility if it were

to consider this argument.[10] The conclusion from this discussion is that petitioners' invocation of considera-

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[10]Matters relating to the State's fiscal policies such as the following chosen at random from the multitude of possible questions might become relevant if the Court were to pursue the argument based on lack of funds:

(a) *Revenue raising.* (1) Although North Carolina imposes a retail sales tax of two percent on the sale of any motor vehicle (by contrast with a general retail sales tax of three percent) it limits "the maximum tax with respect to any one such aircraft, railway locomotive, railway car or motor vehicle or boat, including all accessories attached thereto" to one hundred and twenty dollars, thereby taxing only the first $6,000 of the purchase price of any such vehicle. N.C. Gen. Stat. §105-164.4 (1975 Supp.). Should the Court consider whether North Carolina can plead relative poverty as an excuse for not meeting its constitutional obligations while it exempts from its sales taxes the value in excess of $6,000 of the expensive cars, airplanes and boats bought for business or pleasure in the State? (2) North Carolina is one of few states in the country and one of only two states in the Southeast which exempts corporations whose annual taxable income does not exceed $1.67 million from its current tax system. N.C. Gen. Stat. §§105-130.19, 105-163.25 to 105-163.30 (1972); see Turnier, "A Meaningful Corporate Estimated Income Tax for North Carolina" (1976) (report submitted to the General Assembly). Should the Court take into consideration the fact that the North Carolina General Assembly failed in its 1976 session to pass Senate Bill 961 which would have reduced the threshold annual tax limit so as to require most corporations to declare and pay in quarterly installments an estimated annual income tax, and thereby yield to the State a one-time windfall in excess of one hundred million dollars? See Turnier, *supra* at 1.

(b) *Expenditures.* (1) A candidate for the position of state auditor recently pointed out in a public statement that during the period from January, 1973 to June, 1975, the Department of

(continued)

tions of economy is inadequate as a justification for its failure to meet its constitutional responsibilities.

(footnote continued from preceding page)
Correction changed a number of direct service positions – including correctional and probation officers – to administrative positions – including a photographer, a special assistant to the secretary, several stenographers and accounting clerks. Statement of Lillian Woo (January 12, 1976). Should the Court decide whether these changes represent a commitment to "more valuable programs," Brief for Petitioners 13, than the legal assistance program mandated by constitutional considerations? (2) The Department of Correction has had twenty million dollars in funds designed for new construction on hand and unspent (despite the present overcrowding) since the time of the District Court order in this case in 1974. Chapel Hill Newspaper, page 11 (June 1, 1976); Durham Morning Herald, page 12A (June 2, 1976). Should this Court take the availability of these funds into account? (3) Overriding the thoroughly studied and strongly held position of the governing board of the University of North Carolina, Minutes of November 16, 1973 meeting of the U.N.C. Board of Governors, the North Carolina General Assembly in 1974 directed the Board of Governors to develop a second state medical school at East Carolina University and appropriated seven and one-half million dollars as an initial outlay towards that goal. Ch. 1190, §§2,46, N.C. Session Laws of 1973 General Assembly (1974 Session). The Carnegie Commission on Higher Education, in agreement with the Board of Governors, recently found that the medical school is unnecessary. Carnegie Council, *The States and Higher Education* (Jossey Bass 1976). Should the Court become embroiled in the political dispute regarding this investment?

Respondents repeat that we do not think these matters are appropriate for federal court consideration. We list them only to illustrate the kinds of factors that would be implicated if the Court were to consider the State's argument that it cannot afford to provide for its prisoners' constitutional rights.

V.

THIS COURT IN *YOUNGER V. GILMORE* AND THE LOWER COURTS IN THIS CASE ACCORDED PROPER REGARD TO THE EXPERTISE AND DISCRETIONARY AUTHORITY OF CORRECTIONAL OFFICIALS.

Petitioners argue that *Gilmore* and the lower court decisions in this case failed to accord the "proper regard that judges should give to the expertise and discretionary authority of correctional officials." Brief for Petitioners 15. They do not suggest, however, what expertise or discretionary authority they are alluding to. If it is the expertise and discretion in making decisions about allocation of available funds the point has just been answered. If it is expertise and discretion in choosing among the different methods for meeting this constitutional duty, the lower courts in this case as in *Gilmore* accorded almost total discretion to the prison authorities in that regard. Supp. App. 12-13. At one point in their brief, petitioners argue that if required to provide law libraries in their prisons "the States will be forced to think twice before opening numerous small facilities designed, such as in the State of North Carolina, to keep prisoners as close as possible to family and community where rehabilitation can most easily be accomplished." Brief for Petitioners 13. Respondents recognize that this system of establishing prison units in many communities, a carryover from the days when each county was responsible for housing its own prisoners, now serves the salutary purpose of permitting some prisoners to be housed near their home

communities. Respondents would not want to jeopardize this regional nature of the North Carolina prison system and nothing in the order under review does so. On the contrary, the District Court approved a plan submitted by the State and tailored to accommodate the system of small prison units. See Supp. App. 12; *cf., Procunier v. Martinez, supra* at 420; *Stevenson v. Reed, supra*, 391 F. Supp. at 1383; *Hooks v. Wainwright, supra*, Post-Hearing Memorandum of the United States 7-8, 31, n. 61. The State's policy in this regard is carefully preserved, and respondents make no showing otherwise.

Petitioners suggest in their brief that they have made a judgment that prison law libraries are "non-essential services," Brief for Petitioners 13, and that their prisoners are "untrained individuals with neither an understanding nor respect for the law." Brief for Petitioners 22. The first response to this argument is that the choice of law libraries as the means by which it would meet the constitutional needs of its prisoners was made by petitioners, not by the District Court. Indeed, the District Court expressed a personal preference for "an independent attorneys office as well as a law library program." Supp. App. 19, 24. Petitioners have steadfastly stood by their determination to provide only law libraries instead, and should therefore not be heard to complain that the alternative they chose is not a meaningful one. If that is true, their obligation is to develop a program that will be meaningful to their inmates. *Johnson v. Avery, supra* at 490.

The second response is that the Department of Correction has in fact made a determination that the law library facilities will be useful, a judgment which

has considerable support. In its 1974 LEAA grant application, the Department advised the federal government that its proposed law library project was "expected to benefit all inmates within the State Corrections System .... It will also be useful to Corrections' personnel in that they for the first time will have access to legal materials." Exhibit A at 1. It further represented:

> "The Department of Correction intends that the inmate shall not only have access to the court, he shall have meaningful and effective access to the court .... (T)he ultimate result of this program should be a diminution in the number of groundless petitions and complaints filed in the state and Federal courts. The inmate himself will be able to determine to a greater extent whether or not his rights have been violated, and when he submits a petition to the courts which has on its face some merit, the court will be able to appoint counsel in those cases requiring it."

Exhibit A at 4. The Department specifically identified three of the performance objectives of its law library project as:

> "To reduce the number of frivolous civil rights petitions by fifty percent; .... To reduce the number of rejected habeas corpus petitions; ... To increase the quality of all inmate petitions submitted."

Exhibit A at 4, 6.

The law is no longer concealed from the untrained in the same esoteric manner that such as Benjamin Austin, writing under the pseudonym "Honestus," criticized in the infant years of our nation. See Ellis, *The Jeffersonian Crisis* 111-116 (Oxford 1971). Contemporary simplification of legal language and the resulting

clarification of many concepts previously obfuscated by complex or technical phraseology has placed within the reach of laymen a basic comprehension of some legal subjects. This is especially true for laymen who concentrate their law study on a single subject such as criminal law or prisoners' rights. There has also been a proliferation of books, classes and training programs designed to provide non-lawyers with some education in legal matters. Thus, courses in legal subjects are not uncommon today in colleges, in university undergraduate curriculums and in business schools. The increasing popularity, success and professional acceptance of legal paraprofessionals further illustrates the point.[11]

The libraries contemplated by the plan submitted to the District Court by petitioners, in addition to basic legal sources, contain reference books to help prisoners acquire an understanding of the relevant fields of law and particular subjects of their interest, and to help them find their way into the basic materials. These include: Strong, *North Carolina Index* (Lawyers Co-op. 2d ed.); Sokol, *Federal Habeas Corpus* (Michie 2d ed. 1969); LaFave and Scott, *Criminal Law* (West 1972); Palmer, *Constitutional Rights of Prisoners* (Anderson 1973). Supp. App. 15-16. There are many others which the Department through its librarian might administratively choose to augment those research aids. These

[11]See generally, *Procunier v. Martinez*, 416 U.S. 396, 419-420 (1974); ABA Special Committee on Legal Assistants, *News Careers in Law II* 26-43 (Conf. Report 1971); Statsky, *Introduction to Paralegalism* 1-95 (West 1974).

include several criminal law,[12] criminal procedure,[13] and prisoners' rights[14] casebooks. They also include books which explain criminal and correctional law in a way that lay prisoners might understand it, such as West Publishing Company's "Nutshell" series[15] or books designed for college undergraduate courses.[16] There is also, of course, instructional material in legal research

[12]For example, Dix and Sharlot, *Criminal Law* (West 1973); Inbau, Thompson and Moenssens, *Criminal Law* (Foundation 1973); Kadish and Paulsen, *Criminal Law and Its Processes* (Little, Brown 3rd Ed. 1975); Vorenberg, *Criminal Law and Procedure* (West 1975); Weinreb, *Criminal Law* (Foundation 1975).

[13]For example, Goldstein and Orland, *Criminal Procedure* (Little, Brown 1974); Inbau, Thompson, Haw[illegible]d, Zabel and Starkman, *Criminal Procedure* (Foundation 1974); Kadish and Paulsen, *Criminal Law and Its Processes* (Little, Brown 3d Ed. 1975); Kamisar, LaFave and Israel, *Modern Criminal Procedure* (West 4th Ed. 1974); Miller, Dawson, Dix and Parnas, *Criminal Justice Administration* (Foundation 2d ed. 1976); Vorenberg, *Criminal Law and Procedure* (West 1975): Weinreb, *Criminal Process* (Foundation 2d ed. 1974).

[14]For example, Krantz, *The Law of Corrections and Prisoners' Rights* (West 1973); Miller, Dawson, Dix and Parnas, *Sentencing and the Correctional Process* (Foundation 2d Ed. 1976); Orland, *Justice, Punishment, Treatment* (Free Press 1973); Singer and Statsky, Rights of the Imprisoned (Bobbs-Merrill 1974).

[15]Israel and LaFave, *Criminal Procedure in a Nutshell* (West 2d Ed. 1975); Krantz, *The Law of Corrections and Prisoners' Rights in a Nutshell* (West 1976); Loewy, *Criminal Law in a Nutshell* (West 1975).

[16]For example, Kaplan, *Criminal Justice* (Foundation 1973); Kerper and Kerper, *Legal Rights of the Convicted* – (West 1974); Rubin, *The Law of Criminal Correction* (Student Edition) – (West 2d Ed. 1973).

techniques.[17] Perhaps most valuable are books in all of these areas prepared specifically for prisoners. At oral argument in *Gilmore*, Mr. Justice White asked counsel for the appellees whether a handbook to guide an indigent prisoner on habeas corpus could be prepared. *Younger v. Gilmore*, Tr. of Oral Argument at 27. Counsel replied that it could be done, and it has been: Prison Law Project and Barristers Club of San Francisco, *A Manual on Habeas Corpus for Jail and Prison Inmates* (1973). Other groups – and particularly concerned state departments of correction themselves – have also written books that would be immensely helpful to prisoners with regard to all aspects of the law

[17]For example, Cohen, *Legal Research in a Nutshell* (West 2d Ed. 1971); Center for Correctional Training, New York City Department of Correction, *Legal Research Methodology* (English and Spanish language versions); Lloyd, *Finding the Law* (Oceana 1974); Pollack, *Fundamentals of Legal Research* (Foundation 4th Ed. 1973); Price and Bittner, *Effective Legal Research* (Little, Brown 3d Ed. 1969); Statsky, *Introduction to Paralegalism* 360-540 (West 1974); Statsky, *Legal Research, Writing and Analysis: Some Starting Points* (West 1974); West Publishing Company, *How to Find the Law* (West 6th Ed. 1965).

that might be of particular interest to them.[18] In our own State, the Institute of Government at the University of North Carolina is preparing a book on correctional law for prison and jail officials and probation and parole officers that should also be helpful to prisoners. The first chapter has been published in Clarke, "Prisoner Lawsuits and Prison Officials' Liabilities" (Institute of Government Administration of Justice Memoranda, November, 1975). In addition, a group of law students, lawyers and law professors is at work on a manual for North Carolina

[18]For example, ABA Resource Center on Correctional Law and Legal Services and Prison Law Reporter, *Prisoners' Legal Rights: A Bibliography of Cases and Articles* (2d Ed. 1974); Center of Law Enforcement and Correctional Justice, *Ohio Post-Conviction Manual* (Ohio Department of Rehabilitation and Correction 1973); Connecticut Department of Correction, *Landmark Decisions in Correctional Law: A Compendium of Recent Case Law* (1975); Prison Law Collective,–*Jailhouse Lawyer's Manual: How to Bring a Federal Suit Against Abuses in Prison* (1973); Rudovsky, *Rights of Prisoners; The Basic ACLU Guide to a Prisoner's Rights* (Discuss 1973); Toal, *Recent Developments in Correctional Case Law* (South Carolina Department of Corrections 1975); Toal, *The Emerging Rights of the Confined* (South Carolina Department of Corrections 1972). The Correctional Service of Minnesota has published pamphlets for inmates on the subjects of habeas corpus, appeals, and divorce. ABA Project on Minimum Standards for Criminal Justice, *Standards Relating to Post-Conviction Remedies*, Commentary at 51 (Approved Draft 1968); Jacob and Sharma, *supra* at 589-590; Linde, "*Let's Disbar the Jail House Lawyer*," *Proceedings of the American Correctional Association* 124 (1962); see also, *Novak v. Beto*, 320 F. Supp. 1206, 1209 (S.D. Tex. 1970), rev'd 453 F.2d 661 (5th Cir. 1971) ("An extensive legal manual, composed in layman's language, will soon be available in the writ rooms and prison libraries to assist inmates in the preparation of petitions.")

prisoners that should be published and provided to the Department of Correction for distribution to all of its prisons by the time of the decision in this case.

Training programs for inmates are also available. In the plan under review petitioners provided: "Those inmates who work in the libraries will be assigned library duties on a permanent basis. They will be trained to the best extent possible in researching legal questions and assisting inmates in their research." Petition for Certiorari 18, n.1. North Carolina in its 1974 LEAA application proposed to use a law book publisher or a local law school to provide the training. Exhibit A at 5, 9.

Such programs have been successful in other states. See *Johnson v. Avery*, *supra* at 489, 502. The senior attorney for the New York State Department of Correctional Services described his state's experience in an affidavit filed in the pending case of *Carter v. Lally*, Civil No. 72-642-K (D. Md.):

> "After law libraries were placed in the first 7 State instituions, representatives of West Publishing Company went to each institution and conducted education courses to train inmates to use the libraries. Later, in August and September, 1973, the Department and West conducted an intensive six-week training course . . . for a specially selected group of about 33 inmates from all the institutions. The inmates had classes in substantive law, legal research, legal writing and use of a law library, on Mondays, Wednesdays and Fridays. The rest of their time during the six-week period was devoted to studying in their cells and in a large conference room, using the law library, and consulting with the training staff. At the end of the period, the inmates were given legal problems to resolve. The answers were collected and graded,

> and certificates were awarded to the inmates, all of whom successfully passed the course. The inmates were then returned to their institutions to work in the law libraries as legal research clerks. Since 1973, with the assistance of West Publishing Company, the Department has conducted ongoing training programs for inmates in each of the 15 major institutions. About 200 inmates have participated, and more than 60% have passed . . . . West Publishing Company has prepared a manual which is used to train the inmates . . . .
>
> "In addition to training inmates to do work, the Department has also conducted legal training programs for employees. Although met with some skepticism and lack of interest at first these programs are now enthusiastically supported by employees who have participated in them. The programs have given employees a greater understanding of the legal rights of prisoners. The employees who participate in training are usually assigned to supervise the law libraries in their institutions, and they often work closely with the legal research clerks in resolving the inmates' legal problems.
>
> "It has been my experience that the inmate/staff training program and institution law libraries have work very effectively to provide legal assistance to prisoners. . . . Part of the legal research clerk's job is to discourage inmates from filing frivolous claims in court. In addition, the quality of the petitions and writs which are now being filed are substantially better than in the past."

Winters Affidavit 2-4. See also, ABA Resource Center on Correctional Law and Legal Services, "Providing Legal Services to Prisoners," 8 Ga. L. Rev. 363, 415, 427 (1974); Ziegler and Herman, "The Invisible Litigant: An Inside View of Pro Se Actions in the

Federal Courts," 47 N.Y.U.L. Rev. 157, 174, n. 56 (1972). The West and other training programs have been used in other states. ABA Resource Center, *supra*, 8 Ga. L. Rev. at 427. "Those institutions which have undertaken these programs have been surprised and pleased at the results. Prisoners initially participating in the program have often achieved an extremely high degree of competence, and have gone on to train other prisoners, as well as to assist on individual research problems." ABA Resource Center, *supra*, 8 Ga. L. Rev. at 427; see also, Bluth, "Legal Services for Inmates: Coopting the Jailhouse Lawyer," 1 Capital U. L. Rev. 59, 71-72, 79-80 (1972); Wexler, "The Jailhouse Lawyer as a Paraprofessional: Problems and Prospects," 7 Crim. L. Bull. 139, 143 (1971). Thus, the use of prisoners as paralegals is not uncommon. See also, *McDonnell v. Wolff*, 342 F. Supp. 616, 620, 631 (D. Neb. 1972). There has been a useful collateral benefit: it provides vocational training for the inmates and some of them have obtained jobs as paralegals upon their release from prison. ABA Resource Center, *supra*, 8 Ga. L. Rev. at 427-428; Wexler, *supra*, 7 Crim. L. Bull. at 155; *Carter v. Lally*, Civil No. 72-642-K (D. Md.), Statsky Affidavit at 4; Winters Affidavit at 4.

Petitioners have also urged that "the number of inmates who would benefit from the establishment of law libraries . . . would be miniscule." Brief for Petitioners 17. This unsupported factual assertion is inconsistent with the implications in the plan submitted by petitioners that even with law libraries adequate to accommodate 350 prisoners per week, there might be a waiting period for use of the libraries of up to three or four weeks. Petition for Certiorari 18, n.i. The experience in other states has been that the law libraries

are used by a significant proportion of the inmates. See Brief of the Commonwealth of Virginia as Amicus Curiae in Support of the Petitioners at 8; ABA Resource Center, *supra*, 8 Ga. L. Rev. at 425; LeDonne, *supra*, vol. 2 at 46, 54; Spector, "A Prison Librarian Looks at Writ-Writing," 56 Cal. L. Rev. 365, 367, 368 (1968); *cf.*, Burger, "Post-Conviction Remedies: Eliminating State-Federal Friction," 61 J. Crim. L., C. and P.S. 148, 150 (1970). There is no reason to believe that North Carolina's inmates would make any less use of their law books. Their intelligence and educational levels on the average are the same as those of prisoners in other states. Note, 1968 Duke L. J. 343, 348, n.21, 361. 10,500 of them have completed the ninth grade or more; 2,669 have completed high school or more; and 500 have had some college education. North Carolina Department of Correction, *State Correction Statistical Abstract* 37 (March 1976).

Obviously, petitioners advance no contention that their resistance to *Gilmore* is motivated by a desire to control writ writers in order to eliminate problems arising from their practice. *Cf., Johnson v. Avery, supra* at 488. That would be inconsistent with their basic position that because they permit inmates to give legal assistance to others they are in compliance at least with *Johnson v. Avery*. Moreover, there is no reason to believe that writ writers will flourish any more if the prisons have law books than they do now. On the contrary, the plan approved by the District Court contemplates that prisoners will be able to use the law library only one day every three or four weeks, Petition for Certiorari 17-18, n.1., a condition not conducive to the practice of jailhouse law. If controlling this practice were petitioners' concern, they could accomplish that

result by providing legal services for their prisoners. They made the choice, however, not to do that, and they do not argue that the order under review would adversely affect their administration of the prisons or the rehabilitation or discipline of their prisoners.

Thus, petitioners' plea that the Court defer to their expertise and discretion appears to be merely an allusion to a slogan without substance in this case. They have not suggested any respect in which their expertise was disregarded or their discretion unreasonably disturbed by the District Court's order. Certainly to avoid its constitutional responsibility it is not enough for a state to ask for discretion simply for the sake of having discretion.

VI.

ALTHOUGH A LEGAL SERVICES PROGRAM WOULD MORE ADEQUATELY PROTECT ITS PRISONERS' CONSTITUTIONAL RIGHT TO MEANINGFUL ACCESS TO THE COURTS, NORTH CAROLINA IS REQUIRED, AT A MINIMUM, TO PROVIDE LAW BOOKS FOR ITS PRISONERS.

The District Court, after approving petitioners' plan as modified, ordered the parties to submit briefs "on the issue of establishing an independent attorney office to assist prisoners in their legal matters." Supp. App. 19-20. Thereafter, the District Court held that respondents "do not have a constitutional right to have an independent attorneys office as well as a law library

program . . . ."[19] Supp. App. 24. The Court of Appeals agreed both that a legal services program would be helpful and "that adequate legal research facilities and

[19]In reaching this conclusion, the District Court decided that *Ross v. Moffitt*, 417 U.S. 600 (1974), was not applicable to this situation but that "some of the reasoning is appropriate." Supp. App. 23. In *Ross*, this Court held that the Constitution does not require the states to provide "counsel for discretionary state appeals and for applications for review in this Court." 417 U.S. at 602-603. The District Court correctly concluded that *Ross* involved a different factual situation than does this case. In *Ross*, the Court emphasized that by the time of his or her second appeal or petition for ceritorari a defendant has already had the benefit of a brief prepared by an attorney which affords an adequate chance for further review. 417 U.S. at 614; see also, *United States v. MacCollom*, 96 S. Ct. 2086, 2091-2093 (1976). That is not true in the case of civil rights actions and is not necessarily true in the case of post-conviction proceedings. Post-conviction petitions may raise points based on newly-discovered facts or newly-decided law, or may be filed by prisoners who for good reason never did appeal their convictions. The Court observed in *Ross* that the duty of the state is "only to assure the indigent defendant an adequate opportunity to present his claims fairly . . . ." 417 U.S. at 616. Because North Carolina prisoners may never have had the advice of counsel on issues appropriate for post-conviction review and cannot get such help in civil rights cases, for the reasons discussed in *Gilmore* and in the text they are denied that constitutionally required adequate opportunity to present their claims to the courts.

Resort to the courts may be the only avenue for a prisoner to redress an unconstitutional conviction or condition of confinement. Supp. App. 5. "A prisoner, perhaps more than the everyday citizen, has great need for meaningful access to the Courts." Supp. App. 5. For the prisoner, as for a criminal defendant, the judicial "process is not only the paramount dispute-settlement technique, but, in fact, the only available one," *Boddie v. Connecticut, supra* at 376-377, and denial of a

(continued)

an acceptable legal assistance program are to be thought of as alternatives and not as supplements to each other in the discharge of the State's obligation in this area." Petitioner for Certiorari 20. See also, *Johnson v. Avery, supra* at 488. All of the federal courts are in accord. *Stevenson v. Reed,* 530 F.2d 1207, 1208 (5th Cir. 1976), affirming and adopting 391 F. Supp. 1375, 1381 (N.D. Miss. 1975); *Bryan v. Werner,* 516 F.2d 233, 236-237 (3d Cir. 1975); *Cruz v. Hauck*, 515 F.2d 322, 331-333 (5th Cir. 1975); *Kirby v. Ciccone,* 491 F.2d 1310, 1312 (8th Cir. 1974); *Noorlander v. Ciccone,* 489 F.2d 642, 650-651 (8th Cir. 1973); *Novak v. Beto,* 453 F.2d 661, 664 (5th Cir. 1971); *United States ex rel. Russell v. Hendrick,* 376 F. Supp. 158, 160-161 (E.D. Pa. 1974); *Johnson v. Anderson,* 370 F. Supp. 1373, 1385 (D. Del. 1974); *Cross v. Powers,* 328 F. Supp. 899, 903-904 (W.D. Wis. 1971).

The position taken by the Commonwealth of Virginia as amicus curiae is consistent with this doctrine and therefore consistent with respondents' position. Virginia stated the principle as follows:

> "While it is conceded that the lack of a law library or access to such a library might, absent alternatives, unreasonably restrict access to the courts, it is submitted that the requirement of access can be satisfied either by the availability of legal materials, by counsel, or by any other appropriate device."

(footnote continued from preceding page)
prisoner's "full access to that process raises grave problems for its legitimacy." *Id.* at 376.

Ross obviously does not affect the law books issue. The lack of a right to counsel beyond the first appeal would seem to increase the need of prisoners for law books. Indeed, this Court only days after deciding *Ross* unanimously reaffirmed *Gilmore* in *Wolff v. McDonnell, supra* at 578-579.

Brief of the Commonwealth of Virginia as Amicus Curiae in Support of the Petitioners 9. Thus, Virginia asserts that it is in compliance with *Gilmore* and with the decision of the Court of Appeals in this case because it provides "indigent inmates with a system of appointed counsel who are available to confer with inmates regarding any legal matter relating to their incarceration" and "counsel have been appointed to represent the inmates at every major institution and correctional unit in the Virginia Department of Corrections." *Id.* at 6. The same Court of Appeals which decided this case has recognized that such a program could satisfy *Gilmore* but has ordered that a hearing be held on whether Virginia does in fact provide an acceptable legal assistance program. *Vette v. Virginia Department of Corrections,* 529 F.2d 518 (4th Cir. 1976) (unpublished opinion). There is reason to believe that on remand the District Court will find that Virginia's program is satisfactory. *Russell v. Oliver,* 392 F. Supp. 470, 473 (W.D. Va. 1975); *Collins v. Haga,* 373 F. Supp. 923, 925 (W.D. Va. 1974).

Several states now have legal services programs of varying dimensions, many of them comprehensive, for their prisoners. They are described in Exhibit B. There are also sixty-eight clinical law school programs providing assistance to prisoners in thirty states and the District of Columbia. CLEPR, *Survey and Directory of Clinical Legal Education* 1-24 (1976); see Glen, *Jailhouse Law Students; A Report on Law-Student-In-Correction Programs* (National Council on Crime and Delinquency 1973). Legal services programs have advantages over law library programs, and this Court

has encouraged the states to experiment with variations of them. *Procunier v. Martinez, supra* at 419; *Younger v. Gilmore, supra*; *Johnson v. Avery, supra* at 489-490, 502. "The obvious principal advantage of lawyer-staffed programs is competence." ABA Resource Center, *supra*, 8 Ga. L. Rev. at 407. They are able to conduct a "diagnostic interview" with prisoners immediately upon their reception into the prison system, when prompt action to protect their legal rights might be needed and when their apprehension about their criminal cases and civil problems is likely to be at its most disturbing level, and they are able to continue to provide legal counseling and representation from that early stage. Bluth, *supra*, 1 Capital U. L. Rev. at 69-70; LeDonne, supra, vol. 2 at 10-11. They have achieved commendable results in the reduction of frivolous petitions and the improved quality of petitions that are submitted to the courts. Attorneys or their assistants explain to prisoners who seek to file non-meritorious claims the reasons why the likelihood of success on their petitions is doubtful. Bluth, *supra*, 1 Capital U. L. Rev. at 66-67; Norman, *supra*, 48 Fla. B.J. at 737; Wilson, *supra*, 24 Legal Aid Brief Case at 258. In addition, they render useful services in civil areas beyond challenges to prisoners' convictions or the conditions of their confinement, such as: detainers; sentence computations; clemency proceedings; parole and conditional release hearings; classification and disciplinary proceedings; divorce, child custody and support cases; and with governmental benefits (veterans, social security, welfare) and other financial problems. ABA Resource Center, *supra*, 8 Ga. L. Rev. at 383; Jacob and Sharma, *supra*, 18 Kan. L. Rev. at 499-505,

532-589; *Walsh*, "Jailhouse Lawyers: The Texas Department of Corrections Revokes Their License," 1 Capital U. L. Rev. 41, 52-54 (1972); Wexler, *supra*, 7 Crim. L. Bull. at 145; Wilson, *supra*, 24 Legal Aid Brief Case at 255-256; Comment, 1969 Wis. L. Rev. 574; Note, 23 So. Car. L. Rev. 294, 296-301 (1971). They are often able to resolve inmate legal problems by methods short of litigation, which is a service to the judicial system and to the prisons as well as to the prisoner. In the process they contribute to improving the morale of the prisoners, resolving problems that thwart the process of rehabilitation, including civil problems that might otherwise plague the prisoners even after their release, and reducing unrest and violence. *Hooks v. Wainwright, supra*, Post-Hearing Memorandum of the United States 28, n.57; Connecticut Department of Corrections, *Legal Assistance to Prisoners* 4-5 (1975); Jacob and Sharma, *supra*, 18 Kan. L. Rev. at 511; LeDonne, *supra*, vol. 2 at 11; Norman, *supra*, 48 Fla. B.J. at 736-737. At a time when our country and our legal profession are aware of the great need for improved delivery of legal services in civil as well as criminal cases to middle-income and poor persons, see 42 U.S.C. §2996, and have begun to meet the need with legal aid programs, *e.g.*, 42 U.S.C. §§2996 et seq., prepaid legal insurance programs, *e.g.*, N.C. Gen. Stat. §84-23.1 (1975 Supp.), and reduced-cost legal clinics, see *Goldfarb v. Virginia State Bar*, 421 U.S. 773 (1975); Metzger, "Legal Clinics: Getting Into the Routine" 12 Trial 32 (June 1976), it is easy to perceive the special importance of legal services to prisoners. Some have compared the need – and the constitutional right – to medical care. Wedlock, "The Emerging Rights of the Confined: Access to the Courts and Counsel," 25 So. Car. L. Rev. 605, 648 (1973).

Gilmore held only, however, that the constitutional obligation of the states is to provide their prisoners meaningful help in preparation of their court actions. If the State can accomplish this by its plan for a law library program and legal research training of inmate paralegals, that satisfies the *Gilmore* standard. "(P)rison administrators are not required to adopt every proposal that may be thought to facilitate prisoner access to the courts." *Procunier v. Martinez, supra* at 420. Nevertheless, petitioners suggest that their program may not be meaningful to their prisoners. Brief for Petitioners 22. If their plan is not adequate, they must do more to make it meaningful, whether that involves developing paraprofessional or professional legal services programs or some other method for meeting the constitutional standard. See *Stevenson v. Reed,* 391 F. Supp. 1375, 1381 (N.D. Miss. 1975), aff'd, 530 F.2d 1207 (5th Cir. 1976).

This is not to say that the federal courts will have to supervise the North Carolina prison law library program. *Cf., Farrington v. North Carolina, supra.* At oral argument in *Gilmore,* Chief Justice Burger asked counsel for the appellees whether the District Court decision would require the states to provide law libraries comparable to those in this Court's own library. *Younger v. Gilmore,* Tr. of Oral Argument 22. The history of *Gilmore's* enforcement by the federal courts and the process of decision in this case show that that reasonable concern has not proved troublesome. *Gilmore* required not that a state "duplicate the legal arsenal that may be privately retained by a criminal defendant . . . but only [that it] assure the criminal defendant an adequate opportunity to present his claims fairly," *Ross v. Moffitt, supra* at 616, that is,

some "method of satisfying the legal needs of its charges." *Younger v. Gilmore, supra,* 319 F. Supp. at 112. *Gilmore* reached this Court at an intermediate stage: the three-judge court had ordered California to adopt new regulations to meet the constitutional mandate but had not yet decided the scope of California's responsibility. 319 F. Supp. at 112. After this Court affirmed that order, the three-judge court approved over the objection of the prisoner plaintiffs an expanded list of law books submitted by California. *Gilmore v. Lynch,* 2 Pris. L. Rptr. 21 (N.D. Cal. 1972).[20] That is the procedure which other courts have followed, *e.g., Battle v. Anderson,* 376 F. Supp. 402, 435 (E.D. Okla. 1974); *White v. Sullivan,* 368 F. Supp. 292, 296-297 (S.D. Ala. 1973); *Hooks v. Wainwright,* 352 F. Supp. 163, 168 (M.D. Fla. 1972); *Collins v. Schoonfield,* 344 F. Supp. 257, 280-281 (D. Md. 1972); see also, *Stevenson v. Reed,* 391 F. Supp. 1375, 1377 (N.D. Miss. 1975), aff'd, 530 F.2d 1207 (5th Cir. 1976); *Stone v. Boone,* Civil Action No. 73-1083-T (W.D. Mass. 1974) (consent decree), and which the District Court in this case used as a model. Supp. App. 12-13. The federal courts which have dealt with the issue in different contexts have similarly acted with

[20] The court held: Plaintiffs have not met the burden of showing that the proposed regulations are so inadequate that their approval would result in a continued denial to prisoners of their constitutional right to access to the courts." *Gilmore v. Lynch,* 2 Pris. L. Rptr. 21 (N.D. Cal., 1972).

The list of books for its law libraries proposed by California and approved by the court was substantially equivalent to North Carolina's, although it did include reporters going back at least to 1950, rather than 1960 as is the case with North Carolina's plan, *Shepard's Citations* for federal and state cases, and some volumes of *Modern Federal Practice Digest* (West 1973).

restraint in determining the extent of the help that the states must provide, recognizing that the constitutional standard is one of reasonableness and that the "choice of the manner in which the constitutional minimum is assured is essentially a state function." *Stevenson v. Reed, supra* 391 F. Supp. at 1381.

North Carolina's 1974 LEAA grant application demonstrates a commitment to its prison law library program that will insure its success as a meaningful help to its prisoners once this litigation is behind it. Administratively, the Department of Correction will be able to adjust and improve its program as it develops experience under it, so that it will find its program as beneficial as other states have theirs. In light of the positive approach that respondents are confident North Carolina will bring to this program, as displayed in that grant application, respondents are inclined to take lightly petitioners' reservations about the potential for their plan. Although respondents would like to see North Carolina do even more and take steps towards a prison legal services program, they anticipate that prison law libraries will be of great help to them and their fellow prisoners and are satisfied with the protection of their right to access to the courts which petitioners' plan, as modified and approved, promises to deliver to them.

CONCLUSION

For the foregoing reasons, the decision of the Court of Appeals should be affirmed.

Respectfully submitted,

BARRY NAKELL
School of Law
University of North Carolina
Chapel Hill, North Carolina 27514

Court-appointed
Attorney for Respondents

EXHIBIT A

1974 LEAA Grant Application Prepared By The North Carolina Department of Correction.

Department of Natural and Economic Resources
of Law and Order
Box 27687
Raleigh, North Carolina 27611

SUBGRANT APPLICATION

STATE PLAN - FOR OFFICE USE ONLY

Date Received | Control Number

APPLICATION ASSIGNED INITIALLY TO:

LEAA FUNCTIONAL CATEGORY | PROGRAM AREA

Application is hereby made for a grant under Section 301 of the Omnibus Crime Control and Safe Streets Act of 1968 (P. L. 90-351), as amended, in the amount and for the purposes set forth in this application.

4. Project Director (Name, address and telephone)
James Peeler Smith
240 West Morgan Street
Raleigh, N. C. 27609 829-2911

Applicant (Name, address, and telephone)
Department of Correction
240 West Morgan Street
Raleigh, N. C. 27603 829-2911

Signature | Date
James Peeler Smith | June 27, 1974

Implementing Agency (Name and telephone)
Division of Prisons
831 West Morgan Street
Raleigh, N. C. 829-3226

Authorizing Official (Name, title, address and telephone)
David L. Jones, Secretary
Department of Social Rehabilitation and Control
Raleigh, N. C. 829-4926

5. Financial Officer (Name, address and telephone)
C. A. Hooks, Jr.
831 West Morgan Street
Raleigh, N. C. 27609 829-3206

Signature | Date

Signature | Date
C A Hooks Jr | 7-2-74

Type of Application

7. State Plan and Program Area Under Which Application is Made

	If B or C previous Control Number	Plan Year	Program Area Number and Name
☒ Original ☐ Revision of Earlier Unfunded Application ☐ Continuation of Previous Subgrant	N/A	1973	

Project Start Date (Estimated)	9. Project Ending Date (Estimated)	10. Assumption of Project Costs Date (Estimated)
July 1, 1974	June 30, 1975	July 1, 1976

Name of Project (not to exceed 25 characters, including spaces)
Inmate Law Libraries

12. Federal Support Requested
$ 65,039.00

Will Other Federal Support be Available for Any Part of This Project?
☐ YES ☒ NO If yes, identify and explain in budget narrative.

6. Project Summary

To provide all inmates in the custody of the Division of Prisons access to legal materials in accordance with Johnson v. Avery and other Federal court decisions. There will be 7 libraries consisting of a broad range of legal materials. A Xerox machine will be located at one unit so that materials can be made available upon request. Inmates will be transported to the libraries to do legal research. There will be 5 Core libraries, located in other units, containing a few basic legal materials. These will be used as source materials. The project is expected to benefit all inmates within the State Corrections System and provide them the legal materials required under recent Federal court decisions. It will also be useful to Correction's personnel in that they for the first time will have access to legal materials.

C Department of Natural and Economic Resources
ision of Law and Order
O Box 27687
leigh, North Carolina 27611

SUBGRANT APPLICATION | Page 2

15. Project Narrative Description: THE PROBLEM

Begin below and add as many continuation pages as necessary.

15. Federal courts have become increasingly concerned that persons committed to correctional systems have access to the courts. In Johnson v. Avery, the United States Supreme Court held that where prison systems did not offer an alternative, prison writ writers have a right to exist and that the prison department could not prohibit their assisting other prisoners in petitioning the courts. Relying on this decision, a California District Court ordered the California Department of Correction to provide certain specified legal materials to inmates. This decision was affirmed by the United States Supreme Court in a Per Curiam decision Younger v. Gilmore. Since these decisions, other Federal courts have placed similar requirements on other correction systems throughout the country. In Morgan et. al. v. R. L. Turner, (Civil Action Number 4277) and Robert Smith, et. al. v. Vernon Lee Bounds, Commissioner, State Department of Correction, et. al. (Civil Action Number 3052) the United States District Court for the Eastern District of North Carolina, Raleigh Division, approved a proposal for providing legal materials to inmates which it had ordered the North Carolina Department of Correction to prepare.

The Department of Correction is clearly responsible for providing this service to inmates. Other agencies may be aware to some extent of the problem. These agencies, including the state and local Bar Association, often desire to assist. However, the brunt of providing legal services falls on the Department of Correction, and it is the Department of Correction which must respond to the courts in the event that required legal services are not made available. At the same time, the providing of legal services must be under the control of the Department of Correction in order that this Department can insure that such services are offered to all inmates.

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P. O. Box 27687
Raleigh, North Carolina 27611

16. Project Narrative Description: RELATIVE PROJECT PRIORITY

Begin below and add as many continuation pages as necessary.

16. The judicially-mandated requirement that the Office of Correction develop/implement a planned mechanism for providing inmates with access to and assistance with legal problems is one of the most significant problems facing this agency, and, consequently, a major priority among applications for LEAA funds.

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17. Project Narrative Description: GOAL STATEMENT AND MEASURABLE OBJECTIVES

Begin below and add as many continuation pages as necessary.

17. The goal of this project is to place legal materials within the access of every inmate within the North Carolina Correctional System. This project will enable each inmate to obtain those materials necessary for him to determine whether there has been an error in the proceeding in which he was convicted and whether his Federal and state rights have been violated while confined within the North Carolina Correctional System.

By providing the inmate with proper legal forms and directions for filing his court petition, the quality of petitions submitted will improve and the number of frivolous and groundless petitions will diminish. The Department of Correction intends that the inmate shall not only have access to the court, he shall have meaningful and effective access to the court. As noted, the ultimate result of this program should be a diminution in the number of groundless petitions and complaints filed in the state and Federal courts. The inmate himself will be able to determine to a greater extent whether or not his rights have been violated, and when he submits a petition to the courts which has on its face some merit, the court will be able to appoint counsel in those cases requiring it.

The objective will be implemented in the following manner: (a) Law materials will be ordered from the publisher; (b) Library areas will be prepared within designated units; (c) Legal forms will be designed for use by the inmate population; (d) Clerks will be trained in law library procedures; (e) Libraries will be open for inmate use; (f) Weekly inventories will be taken; (g) Replacement volumes will be ordered monthly.

The performance objectives are as follows: (1) To establish 7 libraries at designated unit and institutions; (2) To establish 5 core libraries at other units and institutions; (3) To reduce the number of frivolous civil rights petitions by fifty percent; (4) To reduce the number of rejected habeas corpus petitions; (5) To increase the quality of all inmate petitions submitted.

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13. Project Narrative Description: METHODS & PROCEDURES

Begin below and add as many continuation pages as necessary

The goal of providing legal assistance to inmates in the North Carolina Correctional System will be accomplished by placing legal materials within access of every inmate in the system. The project will progress in the following manner: (a) Legal material to be used in the libraries will be selected by the Project Director; (b) The Project Director will designate the sites of the libraries, and the core libraries. He shall do so in consultation with the Director of Prisons and his delegated agents; (c) The legal materials will be ordered from the publishers; (d) Unit staff will be instructed in the overall supervision of the library; (e) Uniform rules and regulations for access to the library will be drawn up by the Division of Prisons staff and submitted to the Project Director for approval; (f) Inmate assistants will be trained by the Project Director or other designated person in the fundamentals of the use of the library. They will be instructed as to their duties; (g) Library space will be prepared in the designated units and institutions; (h) Library materials will be distributed to the designated libraries upon receipt; (i) Libraries will be open for inmate use.

The Project Director will be responsible for selecting the legal materials to be included in the libraries and approving the designated locations of the libraries. He will also be responsible for approving the rules and regulations concerning access to the library. He will secure the training for those inmates designated to assist in the libraries and will supervise unit personnel in their supervisory responsibilities. He will monitor the project at all times and assist in the preparation of legal forms. He will assume responsibility for insuring that the legal materials are distributed to the proper units and that replacement volumes will be ordered. Unit Superintendents or their designated agents will exercise supervisory responsibility for the day to day operations of the libraries. This will include the responsibility of insuring that the inmates authorized to work in the libraries are performing their duties properly, and, if not, removing them from their library positions. Inmate assistants will operate the libraries on a day to day basis. They will be trained in shelving materials, and being able to identify material. They will also be taught how to update reference materials with pocket parts, loose leafs, enclosures, etc. They will be responsible for the security of materials and for insuring that legal materials do not leave the library.

An initial inventory will be made of the contents of all materials. No inmate except inmate assistants will be able to remove library materials from the shelf. Inmates will be permitted to enter the library, and request publications desired. A log will be kept of inmates entering the library and of materials given to the inmates. The inmate assistant will personally write down the materials given to a library user and will check off the materials when they are returned to the library shelf. At the end of the day, all volumes will be accounted for. There will be a monthly inventory of the conditions of all volumes in order to determine when a volume needs to be replaced. Additionally, inmate assistants will be required to make at least a cursory inspection of a volume's condition upon its receipt by the inmates and upon its return from the inmate user. Any inmate abusing library materials will be denied privileges. Typewriters on which inmate petitions can be prepared will be required. A Xerox machine will be required in one library in order that materials can be made accessible to persons throughout the

18. (Continued)

system. By the use of a Xerox machine it will be necessary only for the inmate to identify what he needs and that particular item can then be sent to him. It would not be necessary then to send the entire volume and therefore would serve both to keep the volume available at all times and to minimize the chance of its destruction. The Department would like to contract for the training of the librarian and of the inmate assistants. This will be accomplished through one of the law schools or one of the publishing companies. At least 21 inmates should be trained. A score of 70% on a law library skills test will qualify the inmate as a library assistant. This training provides the additional benefit of giving the inmates a skill which would be usable upon release. The location of these libraries will be within rooms within the institutions. The main library will be housed in a large room in one of the institutions at Raleigh. It will contain adequate shelf space and lighting so that it will be suitable for research work. A smaller room will be required for the major libraries but with the same general setup. The units having only core libraries will require only a small amount of shelf space and a small area in which the inmate can work. The core libraries will not need a specially trained inmate assistant. However, the Unit Superintendent may find it desirable to use an inmate in this capacity. The major problem foreseeable with the libraries will be to insure the security of the volumes. It is discussed above that security can best be maintained by frequent and thorough inventory and a check-in/check-out system.

Special training will be required for the librarian and inmate assistants in the use and handling of legal materials. This training should include instructions in updating legal materials and replacing outdated volumes. It should also include instructions in the basics of legal research. This will be accomplished by the use of a contract with an outside agency. The agency would be one of the law schools or one of the legal publishing companies. The physical facilities are now available to house these materials.

Inmate assistants will be selected on the basis of intelligence, conduct, literacy, and general clerical abilities. The method for training will be devised by the contracting agency and approved by this Department. Testing of retention will be measured by periodic checks of the inmate assistants and by monitoring the operation of the program where libraries having inmate assistants are located.

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14. Project Narrative Description: EVALUATION DESIGN

Begin below and add as many continuation pages as necessary.

19. The project will be evaluated by testing future submitted petitions against those which have been submitted in the past. This Department retains a large number of the petitions that have been submitted and therefore anyone trained in legal abilities will be able to judge the quality of those petitions submitted previous to the implementation of the law libraries as to those submitted after the law libraries have been instituted. The project will also be measured by the number of inmates having access to legal materials. Presently, access to material is minimal. Success of the program will be measured by the number of inmates actually utilizing the facilities made available. The strengths and weaknesses of the programs can be measured by comparing the quality and volume of petitions originating from each of the separate libraries. The number of frivolous civil rights petitions filed in FY 74-75 should be 50% lower than that which was filed in FY 73-74. The number of successful habeas corpus actions should increase. The quality of all petitions should significantly improve and this can be determined by comparing past petitions with ones filed after the libraries have been installed. Correction personnel will be interviewed after the program has been fully implemented in order to ascertain the opinion of field personnel as to the positive or negative results of the program.

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Project No. _____

Title _____

DETAILED BUDGET *

BUDGET CATEGORY			FEDERAL SUPPORT	STATE BUY IN	MATCHING CONTRIBUTION CASH	MATCHING CONTRIBUTION IN-KIND	CATEGORY TOTAL
PERSONNEL (Employees) 1. Salaries - List each position with yearly salary rate.							
Type of Employer	Position Title	Salary Rate / % of Time Devoted to Project					
	librarian	$10164-12816 100	$ 11,534.00	1,282.00			12,816.00
		Subtotal	$ 11,534.00	$ 1,282.00	$	$	$ 12,816.00
2. Fringe Benefits - Itemize percentages applicable for each benefit.							
FICA (Social Security)		5.85%	675.00	75.00			750.00
Retirement		8.95%	1,032.00	115.00			1,147.00
Hospitalization Insurance		216 x 12 months hospitalization	173.00	19.00			192.00
		Subtotal	$ 1,880.00	209.00	$	$	$ 2,089.00
		TOTAL PERSONNEL	$ 13,414.00	1,491.00	$	$	$ 14,905.00
CONTRACTUAL SERVICES (Itemize) 1. Individual Consultants (List by Individual or Type with Fee Basis and Amount of Time Devoted) Limited to Proven Reasonable Rate not Exceeding $135 per day or $16.87 per hour.							
	Training of librarian and inmate clerks		4,500.00	500.00			5,000.00
		Subtotal	$ 4,500.00	$ 500.00	$	$	$ 5,000.00
2. Contracting or Service Organizations Performing Professional Services (List each by Type with Fee Basis and Amount of Time Devoted) Competitive Bidding Procedure Required to Establish Reasonable Rate.							
		Subtotal	$	$	$	$	$
		TOTAL CONTRACTUAL SERVICES	$ 4,500.00	$ 500.00	$	$	$ 5,000.00

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28. Detailed Budget (continued)

BUDGET CATEGORY	FEDERAL SUPPORT	STATE BUY-IN	MATCHING CONTRIBUTION CASH	MATCHING CONTRIBUTION IN-KIND	CATEGORY TOTAL
C. TRAVEL (Transportation and subsistence of Project Personnel Only. Consultant Travel to be included in (B).)					
50 weeks x $19 per diem	855.00	95.00			950.00
50 weeks x 150 mi. = 7500 mi. x 15¢ $1125.00	1,013.00	112.00			1,125.00
TOTAL TRAVEL	$ 1,868.00	$ 207.00	$	$	$2,075.00
D. SUPPLIES AND OTHER OPERATING EXPENSES (Supplies, Communications, Reproductions, Rent, etc.)					
(1) Direct Costs (Itemize)					
General Supplies	4,500.00	500.00			5,000.00
Library Materials	31,914.00	3,546.00			35,460.00
Subtotal	$36,414.00	$ 4,046.00	$	$	40,460.00
(2) Indirect Costs (Show how Indirect Cost Rate was approved and is to be applied in Budget Narrative)					
Subtotal	$	$	$	$	$
TOTAL OPERATING EXPENSE	36,414.00	$ 4,046.00	$	$	$40,460.00
E. EQUIPMENT (Itemize)					
(1) Purchase					
Item / Quantity / Unit Price					
Typewriter 7 375	2,363.00	262.00			
	$ 2,363.00	$ 262.00	$	$	$ 2,625.00
(2) Lease or Rental					
Item / Quantity / Unit Price					
Xerox Machine 1 $600/mo.	6,480.00	720.00			7,200.00
Subtotal	$ 6,480.00	$ 720.00	$	$	$ 7,200.00
TOTAL EQUIPMENT	$ 8,843.00	$ 982.00	$	$	$ 9,825.00
F. CONSTRUCTION					
(1) Remodeling					
(2) [illegible]					
TOTAL CONSTRUCTION	$	$	$	$	$
TOTAL PROJECT COST	65,033.00	$ 7,228.00	$		$72,265.00

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28. Budget Narrative
Begin below and add as many continuation pages (9a, 9b, etc.) as necessary to relate the items budgeted to project activities, and complete the required justification and explanation of the project budget.

1. Personnel

A librarian with administrative abilities will be required to maintain the operation of the system once established and monitor its effectiveness.

2. The Contractual Services

The librarian and inmate law clerks, who will staff the main library and the major libraries, will need to be trained in the area of legal research and in maintaining a legal library. There are two possible sources from which this training may be obtained. The first is through the West Publishing Company, which has developed extensive programs for use in prisons. The use of West is contingent on our purchasing a sufficient number of West publications. The second source of training is through one of the university law schools located in the immediate vicinity. A figure of $5,000 would be necessary in the event that we had to contract with a law school for training. Twenty-one inmate legal assistants and the librarian would be trained in this program at the outset. It may be that a second course or a refresher course will be required when the project has been underway for some time.

3. Travel

The librarian will be required to visit the libraries throughout the state in order to monitor the progress and effectiveness. It is anticipated that about one trip per week will be required which would likely include an overnight stay. Approximately fifty such trips will be made. Nineteen dollars is the current per diem paid in North Carolina. It is estimated the average trip will be 150 miles. Therefore, fifty trips times 150 miles is 7500 miles at 15¢ a mile equals $1,125.

4. Supplies

(a) General supplies will include paper for the Xerox machine, typing paper, carbon paper, file cards. It is expected that the use of the Xerox machine will be great, therefore, much paper will be required. It is also assumed that several thousands of legal petitions will be filed throughout the system. The general supplies, therefore, include both supplies needed by the inmates in filing their petitions and supplies needed in the operation of the library.

(b) Library materials. See Attachments D1, D2, and D3.
Additional cost - to cover additional volumes and price changes since December, 1973

5. Equipment

(a) Seven typewriters will be required for the typing of inmate petitions. There will be one typewriter in each of the seven major libraries.

(b) The Xerox machine. A high quality Xerox machine capable of copying material printed in books will be required. The price figure is based on experience within the institution. One of the comparable [illegible] machines now used in the Department is used to the extent of about 40,000 copies per month at a cost of slightly less than [illegible] per copy. It is estimated that this machine will be used about half as much as the machine presently used in the Department.

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Project No. _____

Title _____

I. Budget Summary

BUDGET CATEGORY	FEDERAL SUPPORT	STATE BUY-IN	MATCHING CONTRIBUTION CASH	MATCHING CONTRIBUTION IN-KIND	CATEGORY TOTAL
Personnel	$ 13,414.00	$ 1,491.00	$	$	$ 14,905.00
Contractual Services	4,500.00	500.00			5,000.00
Travel	1,868.00	207.00			2,075.00
Supplies and Other Operating Expenses	36,414.00	4,046.00			40,460.00
Equipment	8,843.00	982.00			9,825.00
Construction					
Total	$ 65,039.00	$ 7,226.00	$	$	$ 72,265.00
Percent of Total	90 %	10 %	%	%	100%

II. Federal Dollar Benefit

Local Unit of Government (Citys and/or County's Only)	Federal Dollar Benefit
N/A	$
Total	$

III. Method of Computation

11a

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Attachment B
CERTIFICATION OF NON-SUPPLANTING

	FEDERAL REQUEST	CONTROL NUMBER (Leave blank if unknown)
North Carolina Department of Correction West Morgan Street Raleigh, North Carolina	$65,039.00	
	PROJECT NAME Inmate Law Libraries	

Necessary to provide assurance that subgrant funds will not be used to suppiant or replace funds that would normally be
This certificate is to be signed by the applicant agency's Chief Fiscal Officer.

AGENCY OR DEPARTMENT
EXPENDITURE AND BUDGET DATA

Expenditures	FY 19 72-73	$ 42,914,345.00	
Expenditures	FY 19 73-74	$ 54,215,224.00	% Increase 26.33 %
Budget (Excluding Subgrant Request)	FY 19 74-75	$ 65,962,898.00	% Increase 21.67 %
Average		$ 54,364,156.00	% Increase 24.00 %

CERTIFICATION

In accordance with the provisions of Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, the applicant hereby certifies that federal funds will not be used to suppiant or replace funds or other resources that would otherwise have been made available for Law Enforcement and Criminal Justice.

The applicant further certifies that expenditures for Law Enforcement and Criminal Justice (excluding federal funds) will be at least as great as the preceding fiscal year plus the average annual increase calculated above.

J. A. Hooks, Jr., Controller

Name and title of agency's chief fiscal officer

CA Hooks 7/2/74

Signature of chief fiscal officer — Date

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Attachment C
Assumption of Project Costs

Attachment C

It is possible that continuation funds of a lesser amount for Fiscal Year 75-76 will be solicited from the Governor's Committee on Law and Order. If LEAA funds are required for the following year, they will be substantially less than the amount for the original grant.

Attachment D

MAJOR LIBRARY MATERIALS

	Cost
North Carolina General Statutes	$250.00
North Carolina Reports (1960 -)	202.80
N. C. Court of Appeals Reports	120.12
Advance Sheets for N. C. and N. C. Court of Appeals Report	21.00
Strongs N. C. Index	236.00
North Carolina Rules of Court (West)	8.00
U. S. Code Annotated (West) Title 18 Title 28 2241-2254 (2 copies) Title 28 - Rules of Appellate Procedure Title 28 - Rules of Civil Procedure Title 42 - SS 1891-2010 (2 copies)	225.00
Supreme Court Reporter (West) (1960 -) with Advance Sheets	255.00
Federal Reporter 2d (West) (1960 -) with Advance Sheets	1,564.00
Federal Supplement (West) (1960 -) with Advance Sheets	1,114.00
Black's Law Dictionary (West)	15.00
Sokol Federal Habeas Corpus (Michie)	25.00
LaFave and Scott Criminal Law Hornbook (West) (2 copies)	27.00
Cohen Legal Research	8.00
Criminal Law Reporter (Bureau of National Affairs)	
Palmer Constitutional Rights of Prisoners (Criminal Justice Text Series)	11.50
	4,082.42
	x 7
	28,576.94

Appendix D_2

CORE LIBRARIES

1.	North Carolina General Statutes (Volumes 1B, 1C, 3C)	50.00
2.	Black's Law Dictionary	15.00
3.	Sokol Federal Habeas Corpus	25.00
4.	LaFave & Scott Criminal Law Hornbook	27.00
5.	Criminal Law Reporter	148.00
6.	Palmer, Constitutional Rights of Prisoners	11.50
		276.50
		x 5
		1,382.50

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igh, North Carolina 27611

Attachment E
Certification of Filing of an Equal Employment Opportunity Program

I, Jim Smith (project director) certify that the Department of Correction (agency) has formulated an Equal Employment Opportunity Program entitled Equal Employment Opportunity Within the Department of Correction dated May, 1974 in accordance with the Amended Equal Employment Opportunity Guidelines 28 C.F.R. 42.301. etseq. Subpart E, and that it is on file in the office of Vic Donati, Jr. (name) Director of Personnel (title) 840 West Morgan Street, Raleigh, N. C. (address) 829-2557 (telephone) for review and audit by officials of the Division of Law and Order or the Law Enforcement Assistance Administration as required by relevant law and regulations, and that a copy of this Equal Employment Opportunity Program is on file in the office of the Division of Law and Order.

Signature: [signature]
Title: Senior Administrative Assistant
Address: 840 West Morgan Street, Raleigh, N. C.
Telephone: 829-2911

I, _____ (project director) certify that I have read the Amended Equal Employment Opportunity Guidelines (28 C.F.R. 42.301. etseq. Subpart E) and that no Equal Employment Opportunity Program is required to be filed by the _____ (recipient agency).

Signature: _____
Title: _____
Address: _____
Telephone: _____

(15)

EXHIBIT B

Younger v. Gilmore Compliance Record In The States, The District of Columbia And The Federal Government.

This exhibit was compiled by counsel for respondents from a variety of sources which are indicated in the appropriate places. Complete and up-to-date information was not available for all of the states. The following shorthand references will be used for sources that are frequently cited throughout this document:

ABA Resource Center – ABA Resource Center on Correctional Law and Legal Services, "Providing Legal Services to Prisoners," 8 Ga. L. Rev. 363 (1974).

Consortium – Consortium of States to Furnish Legal Counsel For Prisoners (The Consortium has provided two documents: (1) Program Narrative, (2) Final Report, Grant 75 DF-990013 (1975)).

Jacob and Sharma – Jacob and Sharma, "Justice After Trial: Prisoners' Need for Legal Services in the Criminal-Correctional Process," 18 Kan. L. Rev. 493 (1970).

LEAA Compendium – LEAA, *A Compendium of Selected Criminal Justice Projects* (1975).

LEAA – An LEAA computer printout, dated June 4, 1976 and entitled, "LEAA-Funded Programs Relating to Legal Law Libraries (Block Awards, '72-'76)." The printout thus includes only block awards and does not include discretionary grants, and even as to block awards the top of the printout cautions: "Following state reported data may not reflect all monies subgranted."

LeDonne – LeDonne, *Survey of Library and Information Problems in Correctional Institutions* (H.E.W. Office of Education 1974), in four volumes.

West printout – A computer printout provided by West Publishing Company on June 2, 1976 showing the law books sold by that company for each prison in the country.

ALABAMA

In *White v. Sullivan*, 368 F. Supp. 292 (S.D. Ala. 1973), the court approved a plan submitted at its request by the State for a complete law library at its penitentiary, except that there was no provision for Federal Supplement volumes.

ALASKA

Alaska received an LEAA grant for a law library at its Juneau prison which would be made available to its three other facilities by inter-library loan. "A new institution at Anchorage will have its own law collection." LeDonne, vol. 3 at 5.

ARIZONA

Arizona has complete law libraries in its two main prisons. ABA Resource Center at 423; LeDonne, vol. 2 at 18, 22, vol. 3 at 6; West Printout. Arizona received LEAA funds to upgrade its prison law libraries, provide instruction in legal research, and train inmates as law librarians and paralegals. LEAA #74A04R0077; LeDonne, vol. 2 at 18, 22, vol. 3 at 6.

The University of Arizona College of Law conducts a post-conviction clinic at the Arizona State Prison. *Foggy v. State ex rel. Eyman*, 107 Ariz. 532, 490 P.2d 4, 6 (1971).

Rule 32.5(b) of the Arizona Rules of Criminal Procedure provides that if an indigent files a state post-conviction petition the court "shall appoint counsel who may file an amended petition within 15 days of appointment." Confirming the impression that this rule provides for automatic appointment of counsel without initial screening is the Comment to that rule: "Appointed counsel's first duty is to ensure that the petitioner has included all his grounds for relief in one petition and to file an amended petition when necessary to do so."

ARKANSAS

Arkansas has complete law libraries in two of its prisons which serve all three of its prisons. ABA Resource Center at 423; LEAA Compendium at IV-361; LeDonne, vol. 3 at 7; West Printout.

Arkansas received LEAA funds for a full-time attorney plus supporting personnel, including law students from the University of Arkansas, to provide legal counseling, information, and representation to prisoners in a broad range of cases except cases against the Department of Corrections. LEAA funds have also been used for prison law libraries. LEAA Compendium at IV-361; LEAA Printout #72A05R0185; LeDonne, vol. 2 at 26.

CALIFORNIA

California has complete law libraries in all twelve of its prisons. *Gilmore v. Lynch,* 2 Pris. L. Rptr. 21 (1972); ABA Resource Center at 423; West Printout.

There is also a law library for sentenced inmates at the Los Angeles County Jail. *Brown v. Pitchess,* 13 Cal. 3d 518, 119 Cal. Rptr. 204, 206, 531 P.2d 772 (1975).

COLORADO

Colorado has complete law libraries at both of its prisons. *Hampton v. Schauer,* 361 F. Supp. 641, 642 (D. Colo. 1973); LeDonne, vol. 3 at 9; West Printout.

In addition, the public defender consults with prisoners on post-conviction matters. "He is not required to conduct post-conviction proceedings for inmates, but is authorized to do so if he is satisfied that there is arguable merit to the proceeding." *Hampton v. Schauer, supra* at 643-44.

CONNECTICUT

The Connecticut program is described in Connecticut Department of Correction, *Legal Assistance to Prisoners* (1975) and Greene and Whitehead, "Civil Legal Assistance to Prisoners" (1975), the official progress report of the Connecticut Legal Assistance to Prisoners Program prepared by its director and one staff attorney.

The prisons at Somers and Enfield have complete law libraries administered by a professional librarian. Material in the public domain, and copyrighted material

with the permission of the copyright owner (such as law reviews), is provided on microfilm. Where that is not possible, hardcover law books are provided. Eight other Connecticut prisons have the microfilm material only. In addition, at the request of a prisoner the State Library will photocopy material and send it to the prisoner free of charge. ABA Resource Center at 423; Connecticut Department of Correction, *supra* at 4-8; LeDonne, vol. 2 at 10, vol. 3 at 10; West Printout. Connecticut received LEAA funds for its legal collection at Somers. LeDonne, vol. 3 at 10.

The Legal Assistance Program for Prisoners has been in operation since January 1, 1972. It was organized at the initiative of the Department of Correction but is administered through the Connecticut Prison Association, a private non-profit organization. It has received LEAA funds. The attorneys in the program interview about ninety prisoners and take about thirty-one new cases per month. They provide comprehensive legal services to all of the state's prisoners and parolees in civil cases, including the following: habeas corpus, civil rights, detainers and warrants, time computation, sentence modification, parole revocation, pardon, and administrative (including prison transfers, visiting rights, classification, medical treatment); divorce (including property division, child custody, support and visitation rights and alimony), replevin to protect the property of prisoners, torts (as plaintiffs against the prison for injuries and as defendants in automobile accident, workmen's compensation and general negligence claims), paternity, probate court cases (including wills, trusts and estates and termination of parental rights cases), drivers license problems, military benefits cases, welfare, federal tax problems, deportation and related immigra-

tion cases, bankruptcy, and voting rights problems. Connecticut Department of Correction, *supra* at 3-4; Greene and Whitehead, *supra* at 1-39; LEAA Printout #72A09R0175; see also, Jacob and Sharma at 607.

DELAWARE

Delaware has fairly complete law libraries at two of its three major prisons and none at its fourth. *Johnson v. Anderson,* 370 F. Supp. 1373, 1383, 1385 (D. Del. 1974); ABA Resource Center at 423; West Printout.

FLORIDA

Florida is a member of the Consortium, which it joined in 1974. Its program, called the Florida Prison Project, is administered through Florida Legal Services, Inc., and became operational in April, 1975. It is still in its three year period of LEAA funding, and is working towards securing state funding at the end of the grant period.

The Florida Prison Project has staff offices in Gainesville and Tallahassee. It has a staff consisting of six attorneys, one Vista attorney, law students, and three secretaries. It handles such problems as state and federal habeas corpus, sentence computation, divorce, child custody, consumer law, change of name, etc.

The program was inspired by *Hooks v. Wainwright,* 352 F. Supp. 163 (M.D. Fla. 1972), which is still pending. Consortium Final Report at 4, 12-13; Consortium Program Narrative at 3; LEAA Compendium at III-201; Norman, "Civil Legal Services to Prison Inmates," 48 Fla. B.J. 736, 737-738 (1974).

GEORGIA

Georgia is a member of the Consortium, and was one of the original three members in 1972. Its program, with an annual budget of $125,000, is now fully funded by the State. It is administered by the University of Georgia Legal Aid and Defender Society and has four attorneys operating out of two offices, with the help of law students and secretaries.

> "During three years of operation, the Georgia project has developed a complete legal services program. At the Diagnostic and Classification Center at Jackson, the project office is staffed by two senior staff attorneys, a secretary and paid law students. . . . This staff primarily screens all incoming inmates in the system, isolates legal problems and initiates legal or administrative resolution measures.
>
> "The office located at the University of Georgia in Athens is staffed by the state supervisor, two staff attorneys, a secretary and law students. . . . Teams of students and staff attorneys travel extensively to institutions ranging from the maximum security Georgia State Prison to the rural work camps which dot the state."

The Georgia project handles habeas corpus and post-conviction proceedings, sentence reviews, sentence computations, parole advice, divorce and child custody cases, military discharge problems, and prison transfer matters. It had a caseload of 3,676 during one nine-month period. Consortium Final Report at 2-3, 9; Consortium Program Narrative at 4-5; LeDonne, vol. 2 at 10.

HAWAII

Hawaii State Prison at Honolulu has a complete law library. West Printout; see also, LeDonne, vol. 3 at 16.

Federal funds provided under the Public Library Services and Construction Act were used to buy basic level law materials. The Hawaii Supreme Court library sends duplicate materials to the prison library, and the prison librarian photocopies materials from the Supreme Court library. Attorneys have taught legal research classes at the prison. LeDonne, vol. 3 at 16.

In addition, Hawaii provides by statute that:

> "Any indigent person who is . . . convicted of an offense or offenses punishable by confinement in jail or prison . . .shall be entitled to be represented by a public defender." Hawaii Rev. Stat. §802-1 (1975 Supp.).
>
> "Any person entitled to representation by a public defender or other appointed counsel may at any reasonable time request any judge to appoint counsel to represent him." Hawaii Rev. Stat. §802-3 (1975 Supp.).

IDAHO

Idaho has a complete law library at its prison, purchased with the help of LEAA funds. LeDonne, vol. 3 at 17-18; West Printout.

ILLINOIS

Illinois has complete law libraries at eight of its nine prisons. *Black v. Brown,* 513 F.2d 652, 655 (7th Cir. 1975) (Joliet Prison); ABA Resource Center at 423; LeDonne, vol. 3 at 19-20; West Printout (Joliet Prison).

In Chicago, the Foundation for the New Business Ethic, largely dependent on volunteer attorneys,

> "has contracted with the Illinois Department of Corrections for the delivery of legal services at the complex at Joliet . . . .Emphasizing civil cases, it also handles quasi-criminal matters, with the exclusion of post-conviction matters and appeals. It has the authority to engage in class actions and section 1983 cases and soon will begin to appear at disciplinary hearings and to file post-conviction petitions. In six months, it has conducted over 1,000 interviews, closed 352 cases, and has another 354 open files. There are five full-time staff, including the director and two third-year law students who can practice in state courts. They are supplemented by fifty-four volunteers, twenty-seven attorneys, twenty law students and seven clerical workers."

ABA Resource Center at 408.

The law school at Southern Illinois University at Carbondale operates the Prison Legal Aid Program, which is funded by the state planning agency with some LEAA funds, and which furnishes non-criminal legal services to prisoners in about five prisons. CLEPR, *Survey and Directory of Clinical Legal Education* 19 (1976).

INDIANA

There is a complete law library at the State Reformatory at Pendleton. West Printout. In *Aikens v. Lash,* 371 F. Supp. 482 (N.D. Ind. 1974), the court ordered that a constitutionally adequate law library be provided at the Indiana State Prison at Michigan City.

IOWA

There is a complete law library in the state penitentiary. LeDonne, vol. 3 at 22; West Printout. There are complete law libraries in the Reformatory at Anamosa and the Women's Reformatory in Rockwell City, except that they may not have a Supreme Court reporter. West Printout.

In two adult facilities other than the penitentiary "students from Iowa Law School and community lawyers hold consultations with inmates." LeDonne, vol. 3 at 22.

The state post-conviction statute provides:

> "If the applicant is unable to pay court costs and expenses of representation, including stenographic, printing, and legal services, these costs and expenses shall be made available to the applicant *in the preparation of the application*, in the trial court, and on review." Ia. Code Ann. §663A.5 (1976 Pocket Part) (emphasis added).

KANSAS

Kansas is a member of the Consortium, and was one of the original members in 1972. Its program is described in the Consortium Program Narrative and the Consortium Final Report, and also in the following documents: Glen, *Jailhouse Law Students; A Report on Law-Student-in Correction Programs* 6-8 (National Council on Crime and Delinquency 1973); LEAA Compendium at III-201, IV-360; LeDonne, vol. 2 at 10; Meyer, "The Defender Project," The KU Laws 5 (Fall, 1973); Wilson, "Legal Assistance Project at Leavenworth," 24 Legal Aid Brief Case 254 (1966);

Consortium, State of Kansas, *Legal Services for Prisoners, Inc.; Twelve Months Statistical Report* (1975); Legal Services for Prisoners, Incorporated, *The Facts About Legal Services for Prisoners, Incorporated* (1975 Report) (1976 Report) (two documents); Wilson and Meyer, *Legal Education in the Jailhouse: An Appraisal* (1974).

Oldest of the prison legal services programs, the Kansas Defender Project began in late 1965 as a clinical education program for law students at the University of Kansas which served the federal prison at Leavenworth. The next year, at the request of the state director of penal institutions, it was extended to the state prisons in the vicinity of the law school: primarily the State Penitentiary, but also the Correctional Institution for Women and the Reception and Diagnostic Center. The Kansas Defender Project received financial support during its first two years from the Metzenbaum Human Relations Fund of Cleveland, Ohio. For its second year it received additional funding from the National Defender Project of the National Legal Aid and Defender Association (NLADA) and that financial support continued for another three years. For the next two years, LEAA funds supported the Project. The law school provided the part-time service of faculty members and provided funds to employ law students for the Project during the summer. A law faculty member served as director of the Project and during the four years of NLADA funding, the Project employed a full-time attorney and a psychiatrist and clinical psychologist on a part-time basis.

Then in 1972 the Consortium was formed with Kansas as one of its three charter states. To administer the new program Legal Services for Prisoners, Inc. (LSP) was formed as a non-profit corporation independent of the law school and the prison system. LSP became operational in August, 1972. It is now fully funded by the State. The Kansas Defender Project continues to provide legal services to the federal prisoners at Leavenworth. *Potts v. Carlson*, No. 74-124-C3 (D. Kan. 1975).

LSP provides legal services for the inmates of all of the Kansas prisons. The professional staff, including the director, consists of three full-time and one part-time attorneys. LSP also relies on law students from the University of Kansas and Washburn University. The students are supervised by faculty members at each law school as well as by the professional staff.

LSP interviews each Kansas prisoner upon his reception into the prison system during the orientation process. Thereafter, it provides legal services in the areas of habeas corpus and post-conviction cases, representation at prison disciplinary proceedings, sentence computation or credit problems, detainer problems, parole revocation proceedings, extradition hearings, clemency applications, divorce and child custody cases, tax returns, and social security, veteran's benefits and welfare questions.

KENTUCKY

Kentucky has complete law libraries in two of its three prisons, and a partial library in the women's prison. LeDonne, vol. 3 at 24; West Printout. Its law

libraries were "begun with Library Services and Construction Act funds, are now funded by the Department of Corrections. These libraries are separate from the regular libraries, and through inter-library loan are open to the women's prison. Law consultants from the University of Kentucky also aid in filling inmate requests for legal information." LeDonne, vol. 3 at 24.

LOUISIANA

There are complete law libraries in all three prisons. ABA Resource Center at 423; West Printout.

MAINE

There is a complete law library at Maine State Prison but only the state statutes in the other two. There is inter-library loan service from the Maine State Law Library, which delined as the Maine State Prison strengthened its law collection. ABA Resource Center at 423; LeDonne, vol. 3 at 26; West Printout.

MARYLAND

The legal services programs for prisoners in Maryland are described in a Stipulation on file in *Carter v. Lally*, Civil No. 72-642-K (D. Md.), a pending case. The following information is taken from Exhibits 6, 7 and 8 to that Stipulation.

The Maryland State Public Defender has a collateral proceedings division which consists of seven full-time staff attorneys and two full-time and two part-time

investigators. They handle about one hundred cases per month in state court in the following categories: violation of probation; non-support; defective delinquency hearings; coram nobis, habeas corpus and post-conviction petitions; and sanity hearings.

The Maryland State Public Defender also has a division which began operation on January 1, 1975 with LEAA funds to provide assistance and representation to prisoners with the following legal problems: applications for post-conviction relief; detainers; parole revocation hearings; habeas corpus proceedings (extradition); and other criminally related matters. This division is staffed by two attorneys and four paralegals.

The Baltimore Legal Aid Bureau has a Prisoner Assistance Project which is federally funded and is staffed by a director, a staff attorney, two full-time legal assistants, and several law students. The Project provides legal assistance and representation for state prisoners in civil rights actions, state and federal post-conviction proceedings, detainers, state sentencing motions, extradition hearings, proceedings before the Inmate Grievance Commission, divorce proceedings, and forfeiture hearings. See also, ABA Resource Center at 405, n. 133.

The University of Baltimore Law School Program has law students interview prisoners at the prison system's reception center and explain their present legal situation and the various options available to them.

MASSACHUSETTS

Massachusetts has complete law libraries at its prisons in Norfolk and Walpole, and partial libraries in its other four prisons. *Stone v. Boone,* Civil Action No. 73-1083-T (D. Mass. 1974) (consent decree re: Walpole); ABA Resource Center at 423; LEAA Compendium at IV-362; LeDonne, vol. 3 at 29; West Printout.

The Prisoners' Rights Project in Boston with LEAA funding provides legal services to the inmates of the prisons at Walpole and Framingham. The Project staff consists of five lawyers and three paraprofessionals. They represent prisoners in a variety of matters, including criminal appeals and other post-conviction matters, cases against state agencies which are not resolved by negotiation, charges of escape or other crime within the prison, administrative matters such as medical problems, furlough applications, transfers, lost property, and parole revocation hearings. The Project staff also recommends legislation and administrative regulations. LEAA Compendium at IV-362; see also, ABA Resource Center at 405; Krantz, Bell, Brant and Magruder, *Model Rules and Regulations on Prisoners' Rights and Responsibilities* 208 (West 1973).

MICHIGAN

Michigan has complete law libraries in all five of its prisons. ABA Resource Center at 423; LeDonne, vol. 3 at 30; West Printout.

MINNESOTA

Minnesota was one of the original members of the Consortium in 1972. Its program, called Legal Assistance to Minnesota Prisoners (LAMP) is now fully funded by the State and is no longer part of the Consortium. Cases involving challenges to convictions are handled by the state public defender. The following description of LAMP and the state public defender is taken from the Biennial Report of the Judicial Council of the State of Minnesota (1974) and from chapter VI of the Report of the Joint House-Senate Committee on Minnesota State Prison (February, 1976). See also, ABA Resource Center at 406; LeDonne, vol. 2 at 10.

LAMP employs two full-time attorneys and also uses students from the University of Minnesota Law School and the William Mitchell College of Law. Law students are employed during the summer to continue the services provided by students during the academic year.

LAMP does not handle post-conviction cases. Instead it helps prisoners with domestic problems such as divorce, child custody and visitation rights, with detainers, with representation in disciplinary hearings, with civil rights actions against the prisons, and with such other problems as property recovery, property civil damage actions, releases, name change, drivers license, military, tax, consumer protection, defendant tort suits, immigration, financial matters such as debts and bankruptcy, and personal injury.

The state public defender by court appointment represents prisoners in appeals, petitions for habeas corpus, post-conviction petitions, efforts to remove detainers, and parole revocation hearings.

MISSISSIPPI

There is a complete law library at the Mississippi State Prison at Parchman. *Stevenson v. Reed,* 530 F.2d 1207, 1208 (5th Cir. 1976), affirming 391 F. Supp. 1375, 1377, n. 2 (N.D. Miss. 1975); West Printout.

MISSOURI

Missouri has incomplete libraries at two of its prisons and only a few law books at each of the other two, and is now in litigation over the matter in *Thompson v. Camp,* No. 74 CV-97C (W.D. Mo.).

Missouri has received LEAA funds for a law student legal aid program for prisoners from the law schools at the University of Missouri and Washington University. LEAA #73A29R0575. In *Goldsby v. Carnes,* 365 F. Supp. 395, 405-406 (W.D. Mo. 1973) the parties entered into a consent judgment providing for an incomplete law library at the Jackson County Jail.

MONTANA

There is a complete law library at the Montana State Prison. LeDonne, vol. 3 at 35.

There is a Prison Legal Service Program which provides legal assistance to inmates at the prison. The law school at the University of Montana has a class of students working with the Program during the academic year. LEAA made a grant to the law school to support two students working with the Program during the summer. The Program handles post-conviction reviews, detainers, parole hearings, and divorce and child

custody cases. Jacob and Sharma at 607; LEAA Compendium at IV-364; LeDonne, vol. 3 at 35.

NEBRASKA

The Nebraska Prison has a complete law library. *McDonnell v. Wolff,* 342 F. Supp. 616, 618, 629 (D. Neb. 1972); LeDonne, vol. 3 at 36. It also provides an inmate paralegal to assist other prisoners. *Id.* at 620-621, 631; ABA Resource Center at 412-413; Jacob and Sharma at 593; Note, 1968 Duke L. J. 343, 359.

NEVADA

There is a law library at the Nevada Prison, but the extent of it is uncertain. ABA Resource Center at 423; LeDonne, vol. 3 at 37.

NEW HAMPSHIRE

There is a law library at the New Hampshire Prison, but the extent of it is uncertain. LeDonne, vol. 3 at 38.

NEW JERSEY

New Jersey, using LEAA funds, has complete law libraries at all seven of its prisons. ABA Resource Center at 423; LeDonne, vol. 3 at 39; West Printout.

NEW MEXICO

New Mexico received LEAA funds to provide a basic set of law library materials at its prison and to train an inmate law librarian, expected to work with a clinical law school program. LEAA #74A35R0023.

NEW YORK

New York State, using LEAA funds, has complete law libraries in all twenty of its prisons. ABA Resource Center at 423; LEAA #73E36R3381; LeDonne, vol. 2 at 6; vol. 3 at 41, 42; *Carter v. Lally,* Civil No. 72-642-K (D. Md.) (Affidavit of Jerome L. Winters); see *Montanye v. Haymes,* 44 U.S. L. Week 5051, 5051 (1976).

New York City, also using LEAA funds, also has complete libraries in all of its prisons. ABA Resource Center at 423; LEAA #72A36R1157, #73A36D3390, #73A36R1500, #74A36M0132, #75A36R0123; LeDonne, vol. 3 at 42; West Printout.

New York State and New York City also have trained inmate paralegals who operate legal clinics under the supervision of a correctional officer. LeDonne, vol. 2 at 11, vol. 3 at 42; *Carter v. Lally, supra* (Affidavit of Jerome L. Winters).

New York State is beginning a statewide comprehensive legal services program for prisoners. This program is called New York State Prisoners' Legal Services and was implemented by the New York State Bar Association with ninety percent LEAA funds. Until now, New York has had only a patchwork of legal services programs representing some of the inmates at some of the state prisons. The new program will be

staffed by about thirty-five attorneys and a substantial number of paralegals, which will draw on law student assistance, and will have six offices near eleven prisons. It will provide representation in any case in which counsel is not otherwise available, including state and federal collateral attacks on convictions, sentence computation problems, parole matters, civil rights actions, immigration problems, divorce, child custody and visitation cases, consumer fraud and bankruptcy problems. New York State Bar Association "Grant Application to the New York State Division of Criminal Justice Services" (for grant to begin in 1976).

NORTH DAKOTA

North Dakota apparently has no law libraries in its prisons. LeDonne, vol. 3 at 47.

OHIO

Ohio provides complete law libraries in all seven of its prisons. ABA Resource Center at 423; LeDonne, vol. 3 at 48; West Printout.

The legal services program, using trained inmate paralegals and law students from Capital University, and started with CLEPR funds, is described in Bluth, "Legal Services for Inmates: Coopting the the Jailhouse Lawyer," 1 Capital U. L. Rev. 59 (1972); see also, ABA Resource Center at 405-406.

OKLAHOMA

Oklahoma has complete law libraries in its prisons. *Seibert v. McCracken,* 387 F. Supp. 275, 281 (E.D. Okla, 1974); *Battle v. Anderson,* 376 F. Supp. 402, 435 (E.D. Okla, 1974); see, *id.*., No. 72-95-Civ. (July 16, 1975 Order Granting Permission to Disburse LEAA Funds); West Printout.

OREGON

The Oregon State Penitentiary has a complete law library; the other two Oregon prisons have incomplete libraries. *Washington v. Powell,* Civil Action No. 74-43 (D. Ore.) (Parties' Stipulation as to Facts and Order); West Printout. The matter is under litigation in *Washington v. Powell, supra.*

By statute, the court shall appoint the public defender to represent indigent prisoners in state post-conviction proceedings, and he shall be permitted to amend the petition within fifteen days following his appointment if he determines that it is defective in form or substance. Ore. Rev. Stat. §138.590(2), (3), (4) (1975).

PENNSYLVANIA

Pennsylvania provides complete law libraries in five of its eight prisons. *Bryan v. Werner,* 516 F.2d 233, 235, 239 (3d Cir. 1975); ABA Resource Center at 423; LeDonne, vol. 3 at 44.

Several of the prisons, including the ones at Dallas and Graterford, have established inmate legal clinics

staffed by trained prisoners which, under the direction of correctional officers and with the help of attorneys, assist other prisoners in the preparation of legal claims except suits against the prisons or their personnel. *Bryan v. Werner, supra* at 235; ABA Reosurce Center at 412; DeDonne, vol. 2 at 11, vol. 3. at 44.

In *Padgett v. Stein,* 406 F. Supp. 287, 297-298 (M.D. Pa. 1975), the court ordered the York County Prison authorities to submit "a plan that will guarantee inmates effective access to the courts, either by reasonable access to attorneys, by reasonable access to legal material, or by any other reasonable means that can be devised," suggesting several.

By statute, "The Public Defender, after being satisfied of the person's inability to procure sufficient funds to obtain legal counsel to represent him, shall provide such counsel" in state habeas corpus and post-conviction proceedings. Purdon's Penna. Stat. Ann., Title 16 §9960.6 (1976 Pocket Part).

RHODE ISLAND

Rhode Island received LEAA funds for a law library at its only prison. ABA Resource Center at 423; LEAA #73A44R0094.

The Rhode Island Public Defender Service, assuming the functions of the LEAA funded Inmate Legal Assistance Program, provides "indigent prisoners with a broad range of legal services, consisting in part of actions involving civil rights, post-conviction relief, divorce, bankruptcy, probate and bail." *Souza v. Travisono,* 498 F.2d 1120, 1121, and n. 4, 1124 (1st Cir. 1974); LEAA Compendium at IV-363; LeDonne, vol. 3 at 51.

SOUTH CAROLINA

South Carolina has complete law libraries at most of its nine prisons. ABA Resource Center at 423; LeDonne, vol. 3 at 52; West Printout.

South Carolian is a member of the Consortium, which it joined in 1974. Through the Corrections Clinic at the University of South Carolina Law Center it provides comprehensive legal services to all prisoners in the state's correctional system. Its staff consists of a director, two staff attorneys, one part-time attorney (the former director), a secretary and thirty-three law students. In its first nine months it handled 832 cases, closing 450 of them, in the following categories: 202 applications for post-conviction relief; 21 pending offense matters, including 17 detainer problems; 48 divorce requests; several civil rights actions; 21 probation or parole hearings; 19 transfers; and 10 applications for credit for jail time. Consortium Final Report at 3, 4, 10-11; Consortium Program Narrative at 3; see also Jacob and Sharma at 607; Note, 23 So. Car. L. Rev. 294 (1971).

SOUTH DAKOTA

South Dakota has a complete law library at its prison. LeDonne, vol. 3 at 54; West Printout.

TENNESSEE

Tennessee has a complete law library in one of its prisons and smaller collections in two others. LeDonne, vol. 3 at 56; West Printout.

TEXAS

Texas has complete law libraries in thirteen of its sixteen prisons, which were partially funded by LEAA. ABA Resource Center at 423; LEAA #72A48R0932; LeDonne, vol. 3 at 57; Walsh, "Jailhouse Lawyers: The Texas Department of Corrections Revokes Their License," 1 Capital U. L. Rev. 41, 51 (1972); West Printout.

The comprehensive legal services program for Texas prisoners is described in *Novak v. Beto,* 453 F.2d 661 (5th Cir. 1971), remanding 320 F. Supp. 1206 (S.D. Tex. 1970); *Corpus v. Estelle,* 409 F. Supp. 1090 (S.D. Tex. 1975); LeDonne, vol. 2 at 10, 26; Walsh, *supra*, as follows:

After a prison legal assistance program using legal interns proved the need for such a program, inmate acceptance of it, and that it did not cause disruption in the prisons, the Texas Department of corrections in 1969 hired a full-time attorney for the program. He needed a law library as well as a secretary and office supplies. In 1971, one of the former interns was hired as a second attorney for the program. After the decision of the Court of Appeals in *Novak v. Beto, supra,* the program was expanded to thirteen attorneys. At the outset, the program gave priority to post-conviction matters. With the expansion, it began also to represent prisoners in detainer problems and civil cases such as divorces. It does not, however, represent prisoners in civil rights litigation.

UTAH

Utah has one complete law library for its three prisons. ABA Resource Center at 423; LeDonne, vol. 3 at 58.

VERMONT

Vermont nas a complete law library. ABA Resource Center at 423.

Vermont, with only 350 incarcerated inmates, is a member of the Consortium, which it joined in 1974. Its project is administered through the State Defender General's Access to the Courts Project. It has three components: in addition to the correctional facilities defender it has an appellate defender and a juvenile defender. The correctional facilities defender office is staffed by the director, one other attorney, paralegal assistants and a secretary. It has handled post-conviction and sentencing relief actions, parole hearings, classification and program hearings, civil rights actions, and general civil actions such as divorce, personal property claims and medical complaints. Consortium Final Report at 11-12; Consortium Program Narrative at 3.

VIRGINIA

Virginia provides appointed counsel to confer with and assist the indigent inmates at all of its prisons regarding any legal matter relating to their incarceration except those for which they already have counsel. *Vette v. Virginia Department of Corrections,* 529 F.2d 518 (4th Cir. 1976) (unpublished opinion); *Russell v. Oliver,* 392 F. Supp. 470, 473 (W.D. Va. 1975); *Collins v. Haga,* 373 F. Supp. 923, 925 (W.D. Va. 1974); Brief of the Commonwealth of Virginia as Amicus Curiae in Support of the Petitioners 6.

WASHINGTON

Washington has complete law libraries at four of its six prisons. ABA Resource Center at 423; LeDonne, vol. 3 at 62.

"In Washington, a civil legal aid program was established through the State Department of Social Health and Welfare, to handle all cases except criminal appeals, including civil cases encountered by prisoners' families. There are three offices, each consisting of an attorney, a paralegal and a secretary, located near each of the four major institutions. The paralegal and attorney divide interviewing tasks at the institutions." ABA Resource Center at 406; LeDonne, vol. 2 at 10, 26.

WEST VIRGINIA

West Virginia has complete law libraries at its two major prisons. LeDonne, vol. 3 at 63.

WISCONSIN

Wisconsin, using LEAA funds, has complete law libraries at all five of its prisons. *Nickl v. Schmidt,* 351 F. Supp. 385, 390-391 (W.D. Wis. 1972); *Van Ermen v. Schmidt,* 343 F. Supp. 377, 378 (W.D. Wis. 1972); ABA Resource Center at 423; LEAA #73A55R1465; LeDonne, vol. 3 at 64, 65.

Legal services for Wisconsin prisoners are provided by the Legal Assistance to Inmates Program at the University of Wisconsin and by the Wisconsin Corrections Legal Services Program which has a service unit located in Milwaukee and a litigation unit located in Madison. The Corrections Legal Services Program is funded by LEAA with, of course, local matching funds, and also by a purchase-of-services agreement with the Wisconsin Division of Corrections. It is a comprehensive legal services program, operating under the auspices of Wisconsin Correctional Service, that provides a comprehensive program of civil legal assistance for all state prisoners and for former prisoners during at least the first two months after their re-entry into the community. The attorneys in the service unit, operating like a legal aid office, make regular visits to all of the state prisons and handle a wide range of civil legal problems, including divorce, bankruptcy, name changes, drivers license, child custody and support, will drafting, mortgage foreclosures, and consumer fraud. The litigation unit engages in law reform actions and brings lawsuits in state and federal courts on behalf of prisoners complaining against the Division of Corrections. Wisconsin Correctional Service, *Corrections Legal Services Program* (February, 1975).

The Legal Assistance to Inmates Program is funded half by the law school and half by the State Division of Corrections under a purchase-of-services agreement. It is staffed by senior law students under the supervision of two law professors. They interview all new prisoners as they enter the correctional system, discussing their legal problems and answering questions regarding their cases. They try to resolve detainers against the prisoners, obtain credit against their sentences for their jail time, prepare motions for sentence reductions, assist in requests for executive clemency and state post-conviction relief, and handle federal habeas corpus

cases. Civil problems are generally referred to the Corrections Legal Services Program although they do handle problems arising from small debts or traffic charges. *Cross v. Powers*, 328 F. Supp. 899, 900-901 (W.D. Wis. 1971); LEAA Compendium at IV-366; Dickey and Remington, "Legal Assistance for Institutionalized Persons – An Overlooked Need," ___ So. Ill. U. L. J. ___ (1976) (forthcoming); Kimball, "Correctional Internships – A Wisconsin Experiment in Education for Professional Responsibility," 18 J. Leg. Ed. 86, 86-88 (1965); Comment, 1969 Wis. L. Rev. 574; Note, 1967 Wis. L. Rev. 514, 515, n. 6; October 29, 1975 (Memorandum from the Legal Assistance to Inmates Program Staff re: Scope of Legal Assistance to Inmates Program.

WYOMING

There are only a few law books at the Wyoming prison. ABA Resource Center at 423; LeDonne, vol. 3 at 67.

DISTRICT OF COLUMBIA

There is a complete law library at the District of Columbia prison at Lorton. ABA Resource Center at 423.

The District of Columbia Public Defender Service, with LEAA funds, represents the inmates at Lorton in collateral attacks on their convictions, sentence computation and reduction questions, parole matters, detainers, and institutional administrative matters such

as those relating to custody status. It refers general civil problems to the Neighborhood Legal Services Program or the Lawyers to Lorton Project sponsored by the District of Columbia Bar Association. It is staffed by three attorneys, a legal paraprofessional, law students and two secretaries. *United States v. Simpson*, 436 F.2d 162, 168-169 (D.C. Cir. 1970); LEAA Compendium at IV-368; LEAA, *An Exemplary Project: The Public Defender Service of the District of Columbia*, vol. 1 at 34-38.

FEDERAL BUREAU OF PRISONS

The federal government provides complete law libraries and also legal services programs in all of its prisons. *United States v. Simpson*, 436 F.2d 162, 169, and n. 23 (D.C. Cir. 1970); ABA Resource Center at 423; Jacob and Sharma at 613; Bureau of Prisons Policy Statement 2001.2B, 1 Pris. L. Rptr. 243-245 (1972); *Stevenson v. Reed*, 530 F.2d 1207 (5th Cir. 1976), Affidavit of Eugene N. Burkin, General Counsel of the United States Bureau of Prisons, dated December 20, 1973, R. Vol. 1, 137-138.

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In The

Supreme Court of the United States

October Term, 1975

No. 75-915

VERNON LEE BOUNDS, ETC., ET AL.,
Petitioners,

v.

ROBERT (BOBBY) SMITH, ET AL.,
Respondents.

R. L. TURNER, ETC.,
Petitioner,

v.

DONALD W. MORGAN, ET AL.,
Respondents.

JAMES HOLSHOUSER, ETC., ET AL.,
Petitioners,

v.

JOHN HARRINGTON, ET AL.,
Respondents.

BRIEF OF THE COMMONWEALTH OF VIRGINIA AS AMICUS CURIAE IN SUPPORT OF THE PETITIONERS

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BRIEF OF THE COMMONWEALTH OF VIRGINIA AS AMICUS CURIAE IN SUPPORT OF THE PETITIONERS

INTEREST OF THE AMICUS CURIAE

The petition for a writ of certiorari in this case was docketed in this Honorable Court on February 11, 1976, and the opinion of the United States Court of Appeals for

the Fourth Circuit may be found in *Smith* v. *Bounds,* ..... F.2d ..... Mem. No. 74-2378 (4th Cir. 1975). The petition for a writ of certiorari was granted by order of this Court dated April 7, 1976.

The decision of the United States Court of Appeals for the Fourth Circuit dealt with the question whether a state prisoner's constitutional right to access to the courts requires the state to provide him with extensive legal research facilities, is of particular concern to the Commonwealth of Virginia because the affirmance of the holding of the Court of Appeals in these cases could conceivably require Virginia to expend substantial capital to equip several library facilities throughout the Commonwealth, as well as to employ support personnel to staff the facilities.

Lastly, but not least, the amicus curiae is concerned with the effective and efficient disposition of cases before this Honorable Court which must also be damaged by the deluge of litigation which will surely occur should this Honorable Court sustain the holding of the 4th Circuit Court of Appeals. Accordingly, the Commonwealth of Virginia with the sponsorship of its Attorney General offers this brief in support of the petitioners' argument that the State of North Carolina is not required to provide inmates with legal research facilities.

QUESTION PRESENTED

Whether The First And Fourteenth Amendments To The United States Constitution Require State Departments Of Corrections To Provide Inmates With Legal Research Facilities.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

First Amendment to the Counstitution of the United States:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

Fourteenth Amendment to the Constitution of the United States:

Section 1

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Section 53-21.2, Code of Virginia (1950), as amended:

> "The judge of a court of record having jurisdiction in the trial of criminal offenses, in whose county or city the state penitentiary, a prison farm or a unit of the Bureau of Correctional Field Units, is located, shall on motion of the Commonwealth's attorney for such county or city, when he is requested so to do by the superintendent of the state penitentiary, of a prison farm or of a unit of the Bureau of Correctional Field Units, appoint one or more discreet and competent attorneys at law to counsel and assist indigent inmates therein confined regarding any legal matter relating to their incarceration, other than that pending in any court and for which an attorney at law has been appointed by the court or otherwise obtained by an inmate.

"An attorney so appointed shall be paid as directed by the court from the criminal fund, reasonable compensation on an hourly basis and necessary expenses, based upon monthly reports to be furnished the court by him."

STATEMENT OF THE CASE

The consolidated cases of *Bounds* v. *Smith, Turner* v. *Morgan,* and *Holshouser* v. *Harrington,* arose from similar claims asserted by various inmates of the North Carolina Department of Corrections to the effect that by failing to provide adequate legal library facilities, the State of North Carolina was denying reasonable access to the courts and equal protection of the laws to them. The United States District Court for the Eastern District of North Carolina, Raleigh Division, granted a motion for summary judgment submitted by the plaintiffs and required North Carolina to submit a proposed plan to provide adequate library facilities for inmates. The State filed such a plan and, at that point, the inmates objected to an omission from the plan of independent legal counsel for the prisoners as a supplement to the library facilities proposed. The district court ordered counsel for all parties to submit briefs on whether an independent attorney's office was necessary. After consideration, the court refused to require this addition and approved, with modification, the library facility plan submitted by the State.

Both the State and the inmates appealed. The Court of Appeals for the Fourth Circuit, with minor modification, affirmed the action of the district court in requiring the State to furnish legal research facilities to inmates.

ARGUMENT

The United States Court Of Appeals For The Fourth Circuit Erred In This Case In Ruling That A State Must Provide Inmates With Legal Research Facilities.

The cornerstone of the Fourth Circuit Court of Appeals in the case at bar is *Johnson* v. *Avery,* 393 U.S. 483 (1969), which invalidated a prison regulation prohibiting inmates from helping each other prepare writs or other legal papers. In an opinion written by Mr. Justice Fortas, the Supreme Court held that clearly the state could not constitutionally adopt and enforce a rule forbidding illiterate or poorly educated prisoners from filing habeas corpus petitions. Here, the court continued, a rule was adopted which, in the absence of any other source of assistance for inmates, effectively did just that. The Court concluded that for all practical purposes, if inmates were denied the assistance of jail house lawyers, their possibly vaild constitutional claims would not be heard in any court; therefore, unless and until the state provided some reasonable alternative to assist inmates in the preparation of petitions for post conviction relief, it could not validly enforce a regulation barring inmates from furnishing such assistance to other prisoners.

The second basis of the decision of the district court and the Fourth Circuit Court of Appeals in the case at bar was *Gilmore* v. *Lynch,* 319 F.Supp. 105 (N.D. Cal. 1970), *aff'd. sub nom. Younger* v. *Gilmore,* 404 U.S. 15 (1971). In *Younger* v. *Gilmore, supra,* this Honorable Court merely affirmed the judgment of the district court and cited *Johnson* v. *Avery, supra.* However, in *Gilmore* v. *Lynch, supra,* the district court enjoined the enforcement of a prison regulation which established an exclusive list of basic codes and references for prison use. In doing so the

court held that access to the courts encompasses all the means a defendant or petitioner might require to get a fair hearing from the judiciary on all charges brought against him. Citing *Johnson* v. *Avery, supra,* the court further held that some provision must be made to insure that prisoners have the assistance necessary to file petitions and complaints which will in fact be fully considered by the courts.

The court continued in the decision that the alternatives available to the State were numerous and included: public defenders to help inmates in collateral proceedings, and the institution of programs whereby law students and professors could aid the indigent convict.

At this juncture it should be noted that the Commonwealth of Virginia has chosen to provide indigent inmates with a system of appointed counsel who are available to confer with inmates regarding any legal matter relating to their incarceration, other than that pending in any court and for which an attorney has already been appointed by the court or otherwise obtained by the inmate. This system is codified in § 53-21.2 of the Code of Virginia. Further, counsel have been appointed to represent the inmates at every major institution and correctional unit in the Virginia Department of Corrections.

Although Virginia is in compliance with the holding of the Fourth Circuit in *Bounds* v. *Smith, supra,* the amicus curiae submits that the district court and the Fourth Circuit Court of Appeals have adopted a standard which exceeds the requirements of *Johnson* v. *Avery, supra,* and *Younger* v. *Gilmore, supra.* Those cases, it is submitted, are based on the premise that access to the courts by prison inmates must be more than mechanical access; it must be meaningful access. In fashioning a rule to guarantee meaningful access, the district court in *Gilmore* v. *Lynch* and

the Fourth Circuit Court of Appeals in reliance on that case have exceeded the precepts of *Johnson* v. *Avery.*

Johnson, supra, dealt with a regulation depriving inmates of the assistance of other inmates in preparing legal documents. The case held that such a regulation, without a reasonable alternative to prison "writ writers," deprived prospective petitioners of access to the courts. It is submitted that *Johnson* does not require the establishment of a law library which at a minimum would initially cost at least $13,800, plus a minimum annual upkeep of $1,800 and an additional cost for a qualified staff, Werner, *The Present Legal Status and Conditions of Prison Law Libraries,* 66 Law Library Journal 259 (Aug. 1973), but that the holding of the case is limited to the interference of penal officials with inmates rendering assistance to other inmates in drafting petitions.

Similarly, *Gilmore* v. *Lynch, supra,* was concerned with a prison rule that provided for a limited list of books available to inmates. It is submitted that the only conclusion which can reasonably be drawn from the district court's holding is that a state cannot by regulation restrict the contents of prison law libraries once they have been established when they are the only means of legal assistance available to the inmates. It is further submitted that the case does not stand for the proposition that libraries are required in the first place.

Where there is no prohibition against inmates conferring with one another for the purpose of filing petitions, it is submitted that the meaningful access to the courts sought to be protected by *Gilmore, supra,* and *Johnson* v. *Avery, supra,* is in fact protected, and the establishment of an extensive legal library is superfluous. This is especially clear when one considers that there are approximately 6,200 inmates in the Virginia penal system, and those inmates filed

in an 18-month period beginning in June of 1974 and ending in December of 1975 a total of approximately 1,639 petitions for habeas corpus or other relief. This is the equivalent to roughly 26 percent of the inmate population seeking access to the courts. Of course, there are situations in which one inmate files several petitions and the true percentage of the inmate population participating in the judicial process, it is submitted, is substantially lower than the estimate of 26 percent. Therefore, the establishment of prison law libraries would not materially contribute to the meaningful access to the courts by any greater number of inmates. This is especially true in light of the fact that such a large number of inmates now have access to the courts under the present Virginia system.

Given the underlying principle of meaningful access to the courts espoused by *Johnson* and *Gilmore,* the question of whether extensive law libraries satisfies that goal must be considered. The fact is inescapable that the average prison "writ writer" is, in spite of protestations to the contrary, uneducated, of borderline intelligence and often antagonistic towards the legal system which he views as responsible for his present predicament. The practice of law is at the least challenging and the interpretation of statutes, texts, and judicial decisions are often the subject of intense disagreement between scholarly and experienced counsel. It is submitted that furnishing prison inmates with an extensive legal library would be an exercise in futility, especially where the object of the exercise is to provide meaningful access to the courts.

The amicus curiae submits that the meaningful access to the court mandated by *Gilmore* and *Johnson* v. *Avery* can be accomplished, as those cases recognized in a number of ways, only one of which is through the establishment of a law library. In *Hooks* v. *Wainwright,* 352 F.Supp. 163

(1972) it was held that in order to insure that indigent inmates are not denied access to the courts, it is constitutionally mandated that prison authorities furnish indigent inmates with some form of legal assistance which assures meaningful access to the courts. The amicus curiae submits that this is a representative statement of the current state of the law. Any assertion that that legal assistance must be in the form of extensive, expensive libraries fails to recognize that a law library is merely one tool to achieve the constitutional right of access to the courts. Further, it is submitted that law libraries are imperfect mechanisms to achieve this end at best. A law library in the hands of the average inmate is virtually useless, whereas, implementation of the system used in the Commonwealth of Virginia of appointed counsel gives to the uneducated indigent, inmate a source of information and experience at his fingertips he could never hope to duplicate in years of research in the most extensive legal library in imagination.

It is clear that no particular mode of access to the courts by prisoners is required, but that regulations or practices which can be construed as impeding such access are invalid. *Bryan* v. *Werner,* 516 F.2d 233 (3rd Cir. 1975). While it is conceded that the lack of a law library or of access to such a library might, absent alternatives, unreasonably restrict access to the courts, it is submitted that the requirement of access can be satisfied either by the availability of legal materials, by counsel, or by any other appropriate device. *See Cruz* v. *Hauck,* 515 F.2d 322 (5th Cir. 1975).

With these principles firmly in mind, it must be noted that in *Hatfield* v. *Bailleaux,* 290 F.2d 632 (9th Cir. 1961), cert. denied, 368 U.S. 802, 82 S.Ct. 105, 7 L.Ed.2d 59 (1961), a decision by a three-judge court, while affirming the right of the incarcerated not to be unreasonably hindered in making use of the courts, added that "[s]tate authorities

have no obligation . . . to provide library facilities and an opportunity for their use to enable an inmate to search for legal loopholes in the judgment and sentence under which he is held, or to perform services which only a lawyer is trained to perform." *Hatfield* continued that inmates have a constitutional right to waive counsel and act as their own attorneys but that that did not mean they must be given an opportunity to acquire a legal education.

The use of legal assistants as an alternative to law libraries is a concept which has been embraced by several circuit courts. In *United States* v. *Simpson,* 436 F.2d 162 (D.C. Cir. 1970), *cert. denied* 414 U.S. 873, 94 S.Ct. 140, 38 L.Ed.2d 91 (1970), it was held that the use of law students subject to responsible supervision to counsel and advise prisoners in regard to collateral attack on convictions and sentences may provide the key toward serving the need for legal assistance without a drain on the community. In *Gaglie* v. *Ulibarri,* 507 F.2d 72 (9th Cir. 1974), a similar sentiment was expressed, although the court found that the program offered was insufficient because it provided only limited legal aid from law students at a state university and due to a heavy work load of the public defender's office it was doubtful that they would be adequately equipped to provide research assistance on an adequate scale. The amicus curiae submits that the conclusion to be drawn from the relevant case law is that while inmates have a constitutional right to access to the courts, the method whereby that access is provided is variable and can include any means necessary to effectively present any claims to the courts, including the right to the assistance of "jail house lawyers" or access to necessary legal materials. *Knell* v. *Bensinger,* 522 F.2d 720 (6th Cir. 1975). The mechanism to insure access might also include the assignment of counsel to represent inmates as is the practice in the Commonwealth of Virginia. See *Cruz* v. *Hauck, supra.* There is clearly no constitutional right to a law library and the Commonwealth of Virginia as amicus curiae submits that the availability of alternatives that provide meaningful access to the courts is sufficient without the establishment of legal libraries.

CONCLUSION

The Commonwealth of Virginia as amicus curiae on behalf of the petitioners herein, respectfully requests this Honorable Court to reverse the decision of the Court of Appeals and remand the case to the United States Court of Appeals for the Fourth Circuit with directions to vacate its opinion and remand the cases to the district court with instructions to dismiss them.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have mailed copies of the foregoing brief of the Commonwealth of Virginia as amicus curiae in support of petitioners to the Honorable Rufus Edmondson, Attorney General of North Carolina, P. O. Box 629, Raleigh, North Carolina 27602, counsel for petitioners, and to Barry Nakell, Esquire, University of North Carolina School of Law, Chapel Hill, North Carolina 27514, and to Howard E. Manning, Esquire, P. O. Box 1150, Raleigh, North Carolina 27602, on or before the 20th day of May, 1976.

ALAN KATZ
Assistant Attorney General